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STATES

CHARLES E. BROWN

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1941

No. 1040 46

W. B. PARKER, DIRECTOR OF AGRICULTURE, AGRI-
CULTURAL PRORATE ADVISORY COMMISSION,
RAISIN PRORATION ZONE NO. 1, ET AL.,

Appellants,

vs.

PORTER L. BROWN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

EARL WARREN,

Attorney General of California;

WALTER BOWERS,

W. R. AUGUSTINE,

GILBERT F. NELSON,

Deputy Attorneys General;

STROTHER P. WALTON,

Counsel for Appellants.

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STATUTES CITED.

Agricultural Prorate Act of California, being Chapter 754, pages 1969, et seq., Statutes of 1933 of the State of California, as amended by Chapters 471, pages 1526, et seq., and 743, pages 2087, et seq., Statutes of 1935; and further amended by Chapter 6, pages 7, et seq., Statutes of 1937, containing statutes of extra session of 1938; and again amended by Chapters 363, pages 1702, et seq., 548, pages 1947, et seq., and 894, pages 2485, et seq., of Statutes of 1939; and further amended by Chapters 603, pages 2050, et seq., 1150, pages 2858, et seq., and 1186, pages 2943, et seq., Statutes of 1941

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
NORTHERN DIVISION

Civil No. 78

PORTER L. BROWN,

Plaintiff,

vs.

W. B. PARKER, DIRECTOR OF AGRICULTURE, ET AL.,

Defendants.

**APPELLANTS' JURISDICTIONAL STATEMENT ON
APPEAL.**

*To the Honorable Judges of the Above Entitled District
Court of the United States:*

The defendants and appellants herein, W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission, Raisin Proration Zone No. 1, Program Committee, W. B. Parker, Ira Redfern, Lyman Lantze, James Langford, Mark G. Johnson, C. M. Brown, Wm. F. Darsie, Dr. Dean McHenry, Preston McKinney, H. C. Anderson, A. K. Kelly, Renald Mastrosini, Alex. Berg, Mesrob Mirigian, Melchior Hansen, A. L. Davidson, W. J. Cecil and J. C. Harlan, and each of them, in support of the jurisdiction of the Supreme Court of the United States to review

the above-entitled cause and the final decree and permanent injunction therein on appeal, and particularly disclosing the basis therefor, respectfully represent:

(a) That the statutory provisions believed to sustain such jurisdiction are Section 345 of Title 28 of the United States Code Annotated (Judicial Code, Sec. 238, as amended), and particularly the portion thereof reading as follows:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following sections or parts of sections and not otherwise:

"(3) Section 380 of this Title."

and Section 380, Title 28 of the United States Code Annotated (Judicial Code, Section 266, as amended), and particularly the last clause thereof reading:

"And a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

(b) That the statute of the State of California, the validity of which is involved, is known as the Agricultural Pro-rate Act, being Chapter 754, pages 1969, *et seq.*, Statutes of 1933 of the State of California, as amended by Chapters 471, pages 1526, *et seq.*, and 743, pages 2087, *et seq.*, Statutes of 1935; and further amended by Chapter 6, pages 7, *et seq.*, Statutes of 1937, containing statutes of extra session of 1938; and again amended by Chapters 363, pages 1702, *et seq.*, 548, pages 1947, *et seq.*, and 894, pages 2485, *et seq.*, of Statutes of 1939; and further amended by Chapters 603, pages 2050, *et seq.*, 1150, pages 2858, *et seq.*, and 1186, pages 2943, *et seq.*, Statutes of 1941.

That a verbatim copy of the Marketing Program for Raisins, as amended, effective July 23, 1940, approved and

formulated under and in accordance with the said Agricultural Prorate Act, is attached hereto, marked Exhibit 1, hereby referred to, and made a part hereof.

That the essential features of the 1940-1941 Seasonal Proration Program for Raisins, sometimes known as the Seasonal Marketing Program for Raisins, approved and formulated under and in accordance with the said Agricultural Prorate Act and the said Marketing Program for Raisins, as amended, as set forth in Exhibit 1, are as follows:

1. That 20% by variety of all "standard" raisins of the 1940 crop produced within the Zone shall be delivered by the producers into a surplus pool; and that an advance shall be made to producers on such raisins at the time of delivery by such producers of \$27.50 per ton for Muscat and Thompson Seedless raisins, and \$25.00 per ton for Sultanas, to be obtained from the proceeds of a non-recourse loan from Commodity Credit Corporation.

2. That 50% by variety of all such "standard" raisins shall be delivered into a stabilization pool; and that an advance shall be made to producers upon such raisins at the time of delivery by such producers of \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanas, to be obtained from the proceeds of said non-recourse loan from Commodity Credit Corporation.

3. That the balance of such standard raisins, to wit, 30% of each producer's standard raisins, may be disposed of by him without restriction into a primary channel of trade as "free tonnage", provided he has obtained a secondary certificate therefor, which certificate is issued to him when he has satisfied the pool requirements and upon payment of the certificate fee of \$2.50 per ton for each ton of the "free tonnage" (30% of his 1940 production of "standard" raisins):

4. That no "sub-standard" or "inferior" grade raisins may be offered as "free tonnage" or delivered to the surplus or stabilization pools, but that such raisins shall be delivered into separate pools for disposal by the Program Committee at the best prices and under the fairest conditions obtainable for by-product purposes, and that the net proceeds thereof shall be distributed ratably to the producers contributing to such pools.

(c) That the date of the final decree and permanent injunction sought to be reviewed is December 4, 1941, and that the date upon which the application for appeal herein is presented is December 26th, 1941.

(d) That the nature of the above entitled case was an application for an interlocutory and for a permanent injunction restraining the defendants and appellants herein, as the duly constituted officers of the State of California, from the enforcement and execution of any of the provisions of the said Seasonal Proportion Program for Raisins for 1940-41, instituted and formulated under and in accordance with the Marketing Program for Raisins, as amended, effective July 23, 1940, set forth in Exhibit 1 hereof, and under and in accordance with the provisions of the Agricultural Prorate Act, being Chapter 754, Statutes of 1933 of the State of California, and any and all amendments thereto; and to declare each and all of such provisions invalid, void, and of no effect as being contrary to and in violation of Section 8 of Article I of the Constitution of the United States.

That upon the hearing of the application for such interlocutory injunction, the duly constituted three-judge court denied such application and directed the case to be set for trial on its merits at as early a date as the court calendar would permit.

That after the trial of said action the said three-judge court made and entered its findings of fact and conclusions of law and its final decree and permanent injunction enjoining these defendants and appellants as duly constituted officers of the State of California from enforcing against plaintiff any and all of the provisions of said 1940-1941 Seasonal Proration Program for Raisins as to wholesome and sound raisins but not as to unwholesome and unsound or inferior raisins, and from in any manner annoying, harassing, or molesting plaintiff or persons doing any such business with plaintiff, upon the grounds that the great bulk of such raisins consumed as raisins for human consumption are ultimately so consumed outside of the State of California and that the regulation and control of the amount of such raisins which might be prepared for market and moved into the primary channels of trade intrastate places an embargo upon the subsequent transportation of the same out of the State and constitutes a direct regulation of interstate commerce and is a direct burden and obstruction thereto in violation of Article I, Section 8 of the Constitution of the United States.

(e) That the cases believed to sustain the jurisdiction of this appeal are as follows:

Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.,
292 U. S. 386, 390, 54 S. Ct. 732, 734, 78 L. Ed. 1318;

Stratton v. St. Louis S. W. Ry. Co., 292 U. S. 10, 51
S. Ct. 8, 75 L. Ed. 135;

Brucker v. Fisher (6 C. C. A. Mich. 1931), 49 F. (2d)
759;

Eichholz v. Public Service Commission of Missouri,
306 U. S. 268, 59 S. Ct. 532, 83 L. Ed. 641.

(f) That appended hereto, marked Exhibit 2, is a copy of the opinion delivered by the duly constituted three-judge

court herein upon the rendering of the final decree from which this appeal is taken.. (39 Fed. Supp. 895.)

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of said Section 345, Title 28 of the United States Code Annotated (Judicial Code, Sec. 238, as amended) and Section 380, Title 28 of the United States Code Annotated (Judicial Code, Sec. 266, as amended).

Respectfully submitted,

EARL WARREN,
*Attorney General of the
State of California.*

By WALTER BOWERS,

By W. R. AUGUSTINE,

By GILBERT F. NELSON,

Deputies Attorney General.

STROTHER P. WALTON,

Attorneys for Defendants and Appellants.

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EXHIBIT 11137

**DEPARTMENT OF AGRICULTURE
STATE OF CALIFORNIA**

Marketing Program for Raisins, as Amended



Issued July 23, 1940

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Marketing Program For Raisins, As Amended

ARTICLE I DEFINITIONS

SECTION 1. **Definition of Terms.** As used in this Marketing Program, as amended:

(a) **"Raisins"** means unbleached sun-dried or partially sun-dried grapes of the Thompson Seedless, Sultana, and Muscat varieties, grown in the Zone.

(b) **"Zone"** means Raisin Proration Zone No. 1 which was established August 3, 1937, pursuant to proceedings initiated under the Act, and which includes an area composed of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern Counties in the State of California.

(c) **"Person"** means any individual, firm, association or corporation.

(d) **"Commission"** means the Agricultural Prorate Advisory Commission established pursuant to the Act.

(e) **"Committee"** means the Proration Program Committee selected and appointed for Raisin Proration Zone No. 1 pursuant to the provisions of the Act.

(f) **"Director"** means the Director of Agriculture of the State of California, and includes any authorized agent of the Director.

(g) **"Zone Agent"** means the agent appointed by the Committee, subject to the approval of the Director, to administer this Marketing Program, as amended, at the direction of the Committee.

(h) **"Act"** means the Agricultural Prorate Act, being Chapter 754, Statutes of 1933, as amended.

(i) **"Producer"** means any person situated within the Zone and engaged in the business of commercially producing raisins for commercial use from at least one acre of grapes of the Thompson Seedless, Sultana, and Muscat varieties.

(j) **"Handler"** means any person who receives raisins from the producer thereof for the purpose of cleaning, sorting, stemming, seedling, packing, marketing and/or distributing the same.

(k) **"Primary Channel of Trade"** means the transaction in which the producer or his cooperative marketing association loses physical possession of raisins through the sale thereof or other disposition commercially.

(l) **"Production"** means the total tonnage of standard and substandard raisins produced and the equivalent raisin tonnage of grapes which are green diverted in the Zone in any marketing season.

(m) **"Normal Marketing Channels"** means those merchandising channels through which handlers customarily dispose of raisins for human consumption as raisins.

(n) **"Standard Raisins"** means raisins of a quality or grade which is equal to, or better than, the quality or grade for standard raisins as determined by the Committee pursuant to Article X hereof.

(o) **"Substandard Raisins"** means raisins of a quality or grade below the quality or grade established by the Committee for standard raisins, pursuant to Article X hereof, but which are not inferior raisins.

(p) **"Inferior Raisins"** means raisins which are unfit for human consumption, as defined in the Pure Food and Drug Act of the United States of America, as now in force or as hereafter amended.

(q) **"Inferior Raisin Pool"** means the pool established by the Committee pursuant to Article IV hereof and into which all inferior raisins shall be delivered by the producers thereof or their agents.

(r) **"Surplus Percentage," "Surplus Requirement," and "Surplus Pool":**

(1) **"Surplus Percentage"** means that percentage of the standard and substandard raisin crop of the current marketing season which the Committee recommends and the Director approves for elimination or diversion from normal marketing channels, pursuant to this Marketing Program, as amended.

(2) **"Surplus Requirement"** means the obligation on the part of each producer to deliver into the surplus pool established by the Committee all of his substandard raisins, together with such additional tonnage of standard quality raisins, if any, which is required to make such deliveries equal to the tonnage derived by applying the surplus percentage to such producer's standard and substandard raisin crop, or the obligation of each such producer to eliminate part or all of the surplus percentage of his raisin crop through green diversion, whichever method or combination of methods shall be approved by the Committee for each such producer, pursuant to this Marketing Program, as amended.

(3) **"Surplus Pool"** means the pool established by the Committee pursuant to Article V hereof in connection with the surplus requirement of each producer and into which producers shall deliver raisins in fulfillment of such surplus requirement, excepting only those raisins for which the corresponding surplus requirement has,

either in whole or in part, been fulfilled by green diversion pursuant to Article VII hereof.

(s) **"Stabilization Percentage," "Stabilization Requirement," and "Stabilization Pool":**

(1) **"Stabilization Percentage"** means that percentage of the standard quality raisin crop of the current marketing season which the Committee recommends, and the Director approves, shall be temporarily withheld from normal marketing channels, pursuant to this Marketing Program, as amended.

(2) **"Stabilization Requirement"** means the obligation on the part of each producer to deliver into the stabilization pool the stabilization percentage of his standard quality raisins other than the standard quality raisins which such producer has delivered into the surplus pool, or the obligation of each such producer to eliminate part or all of the stabilization percentage of his raisin crop through green diversion, whichever method or combination of methods shall be approved by the Committee for each such producer, pursuant to this Marketing Program, as amended.

(3) **"Stabilization Pool"** means the pool established by the Committee pursuant to Article VI hereof and into which producers shall deliver standard quality raisins in fulfillment of their respective stabilization requirements excepting only those raisins for which the corresponding stabilization requirement has been fulfilled, either in whole or in part, by green diversion pursuant to Article VII hereof.

(t) **"Salable Percentage"** means that percentage of the Standard quality raisin crop of the current marketing season which the Committee recommends and the Director approves for marketing and delivering into the primary channels of trade by producers on their own account, pursuant to this Marketing Program, as amended.

(u) **"Salable or Certificated Tonnage"** means the tonnage of standard quality raisins of each producer obtained by multiplying the sum of such producer's total production of standard quality raisins, other than the tonnage of such raisins used to fulfill the surplus requirement of such producer, and the equivalent raisin tonnage of grapes certified as green diversion by such producer in any marketing season by the salable percentage established pursuant to this Marketing Program, as amended, and which tonnage such producer may market freely in the primary channels of trade to any person without restriction by the terms of this Marketing Program, as amended, other than the payment of such fees and assessments as may be levied pursuant to Articles VIII and XI hereof.

(v) **"Uncertificated Tonnage"** means all inferior raisins and the tonnage of raisins of each producer which, pursuant to this Marketing Program, as amended, the Committee has caused to be placed in a surplus and/or a stabilization pool and for which secondary certificates have not been issued, and shall include all substandard raisins.

(w) **"Green Diversion"** means the picking or clipping of grapes from the vines and disposing of them at the farm where grown, under Committee supervision, in such manner as to preclude the recovery of such grapes for any commercial use, pursuant to Article VII hereof.

(x) **"Marketing Season"** means the period of June 1 of any calendar year to and inclusive of May 31 of the following calendar year.

ARTICLE II

RAISIN PRORATION PROGRAM COMMITTEE

SECTION 1. Raisin Proration Program Committee. In accordance with the provisions of the Act, the Committee shall be the administrative agency established for the purpose of directing the policies and activities of the Zone, within the provisions of this Marketing Program, as amended, and subject to the approval of the Director. The term of office of said Committee shall be a period of two years as provided in the Act.

SEC. 2. Selection and Appointment of Members. Pursuant to Sections 15 and 18 of the Act, the Director shall divide the Zone into as many districts, not exceeding seven (7), as may appear convenient or necessary and allot to each district the number of producers therefrom who may serve upon the Committee. The Director shall thereupon call a meeting of producers in each district at which meeting producers shall elect persons eligible to serve on the Committee. Election shall be by secret ballot after nominations from the floor. Not less than three (3) eligible persons shall be elected for each producer member of the Committee allotted to the district. At such election each registered producer in attendance shall be entitled to one vote, and voting by proxy shall not be permitted. All eligible persons elected in each district shall be registered producers within the district. In the event a corporation or a partnership is a registered producer it may designate a representative who may be a nominee. From the eligible lists of producers elected in such districts, the Director shall, subject to the approval of the Commission, select and appoint seven (7) members to serve on the Committee and one (1) alternate for each such appointment. Each district in the Zone shall be entitled to at least one (1) member on the Committee. The Director may also, if requested by the seven (7) producer members of the Committee and approved by the Commission, appoint, in addition to the producer members, two (2) handler members and their respective alternates to the Committee.

SEC. 3. Vacancies. Vacancies on the Committee occasioned by the expiration of term, death, or resignation of any member, or by removal for incompetence or inattention or neglect of duties as a member of the Committee by the Director, with the approval of the Commission, or by a member ceasing to qualify as a producer or handler of raisins, shall be filled in the same manner as the original appointments were made.

SEC. 4. Organization. (a) The Committee shall select a chairman, vice-chairman, secretary, and such other officers as may be required and may adopt such rules as may be necessary or proper for the conduct of its meetings and its business, subject to the provisions of this Marketing Program, as amended. Registered producers may attend regular meetings of the Committee; *provided, however*, that the Committee may hold closed executive meetings if the holding of each such meeting is first approved by the Director.

(b) The Committee shall not transact any business or take any actions unless there be present at a duly called meeting thereof not less than a quorum of its members. A quorum is hereby defined as consisting of six (6) members if two (2) handler members have been appointed, and five (5) members if two (2) handler members have not been appointed to said Committee.

(c) The Committee shall not perform any of its duties or exercise any of the powers herein granted while there are more than two (2) vacancies in its membership. Headquarters of the Committee and of the Zone shall be in the City of Fresno, California.

SEC. 5. Duties of the Committee. Subject to the limitations established by the Act and to the approval of the Director, the Raisin Proration Program Committee shall have power and it shall be its duty:

(a) To administer this Marketing Program, as amended, in the best interests of all raisin producers.

(b) To recommend to the Director the seasonal marketing program required by Article III hereof, together with administrative rules and regulations and the budgets relating thereto.

(c) To keep minute books, records, and accounts which will clearly reflect all of its acts and transactions and which minute books, records, and accounts shall at any time be subject to the examination of the Director. The regular minute book of the Committee shall be open to the inspection of any registered producer.

(d) To assist the Director in the collection of such necessary information and data as the Director may deem necessary to the proper administration of this Marketing Program, as amended.

(e) To assess and collect the funds necessary to cover the expenses incurred in the administration of this Marketing Program, as amended.

(f) To receive complaints of and to investigate and report to the Director any violations of this Marketing Program, as amended.

(g) To perform such other duties in connection with the administration of this Marketing Program, as amended, as may from time to time be assigned to it by the Director in order to properly effectuate the declared purposes of the Act within the standards and subject to the limitations and restrictions thereof.

SEC. 6. Authorization to Engage Employees. (a) The Committee shall appoint a Zone Agent, subject to the approval of the Direc-

tor, who shall administer this Marketing Program, as amended, under the direction of the Committee and who may be removed from office in the same manner as he was appointed. The salary or compensation of said Zone Agent shall be fixed by the Committee subject to the approval of the Director.

(b) The Zone Agent shall appoint such deputy agents and other assistants as may be necessary to direct this Marketing Program, as amended, which appointments shall be subject to the approval of the Committee.

SEC. 7. Limitation of Liability of Members of the Committee. No member or alternate member of the Committee nor any employee thereof shall be held liable individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member or employee, except for acts of dishonesty.

ARTICLE III

DETERMINATION OF METHOD, MANNER AND EXTENT OF PRORATION

SECTION 1. Determination of Marketing Situation. The Committee shall submit annually, not later than July 15th, for the approval of the Director, a detailed report based upon the most recent data available from the State Department of Agriculture and other reliable sources, which report shall have been assented to by at least five (5) members if the Committee is comprised of seven (7) members or by six (6) members if the Committee is comprised of nine (9) members and which shall set forth the findings of the Committee with respect to the following economic factors:

(a) Estimated carry-over of raisins as of August 31st of the current marketing season.

(b) Estimated tonnage of grapes to be available during the current marketing season for utilization in the fresh, crushing, and drying outlets, respectively.

(c) Estimated tonnage of raisins which will be produced during the current marketing season.

(d) Estimated total supply of raisins to be available during the current marketing season.

(e) The indicated annual disappearance of raisins into normal trade channels for each of the preceding five marketing seasons.

(f) Estimated disappearance of raisins into normal trade channels during the current marketing season.

(g) The tonnage of raisins which will be required to provide a normal merchandising carry-over as of the end of the current marketing season.

(h) Estimated surplus tonnage of raisins for the current marketing season.

(i) Surplus percentage.

(j) Stabilization percentage.

(k) Salable percentage.

(l) Such other facts or factors as may be pertinent.

In the report so made, all raisin tonnage data shall be segregated as to bleached and unbleached raisins; disappearance data shall be further segregated as to domestic and foreign outlets; and carry-over data shall in addition be segregated as to the estimated quantities held by producers and handlers, respectively. Data upon which any of the foregoing estimates are based, in whole or in part, shall be submitted in support of and as a part of such annual report.

SEC. 2. Recommendation of Seasonal Marketing Program. Upon the basis of the findings required by Section 1 of this Article III, the Committee shall recommend annually to the Director on or before August 1st a seasonal marketing program, together with any trade stimulation program which may be contemplated for the current marketing season. The resolution by means of which such seasonal program is recommended to the Director shall have been assented to by at least five (5) members if the Committee is comprised of seven (7) members, or by six (6) members if the Committee is comprised of nine (9) members. Such program shall be in accordance with all provisions of this Marketing Program, as amended, and shall include the following:

(a) The marketing policy for the marketing season as a whole.

(b) The salable, stabilization, and surplus percentages for the current marketing season, if applicable.

(c) The procedure and rules and regulations to be followed in carrying out such seasonal marketing program.

(d) The general plans of the Committee relative to an equalization assessment, if any, and the financing of inferior, surplus, and stabilization pools and the pledging of the products contained in any of such pools for the current marketing season.

(e) Such other factors as may be pertinent to the seasonal program, including the budgets and recommended certificate fees and deductions from any advances to producers for pool tonnage.

SEC. 3. Approval of Seasonal Marketing Program by Director. If the Director finds that the recommended seasonal marketing program, together with such trade stimulation activities as may be recommended, will provide such supply of raisins as is necessary to fulfill the normal requirements of consumers thereof, considering the inventory of raisins held by handlers, by producers, and by or for the Committee, and that such plans are in accordance with this Marketing Program, as amended, and will tend to effectuate the declared purposes of the Act within the standards and subject to the limitations and restrictions

of said Act; and if the Director finds, upon the basis of a referendum by mail ballot sent to all producers of record with the Department, that a majority or more of the qualified producers voting in such referendum approve such seasonal marketing program, he shall approve and declare effective such plans for the current marketing season; *provided, however*, that the Committee may recommend and the Director may approve changes or modifications in such plans not later than August 15 of the current marketing season, subject to the limitations set forth in this Section, including the holding of a referendum. The Director shall establish the rules and regulations under which such referendum shall be conducted.

SEC. 4. Preliminary Report in Event of Green Diversion. If the Committee contemplates a green diversion plan in any marketing season, pursuant to Article VII hereof, it shall, prior to June 15 of such marketing season, submit to the Director for his approval a preliminary report as nearly comparable as is possible to that described in Section 1 of this Article, considering the difference in dates and the availability of the basic economic data. A program of green diversion may be established and conducted by the Committee, with the approval of the Director, and without the holding of a referendum.

SEC. 5. Season of 1940 Excepted from Certain Dates. Any provisions of this Marketing Program, as amended, notwithstanding, the several dates set forth in the preceding Sections of this Article shall not be applicable to the marketing season beginning June 1, 1940; *provided, however*, that any program to be effective for such season shall have been approved and declared effective by the Director not later than September 15, 1940.

ARTICLE IV

INFERIOR RAISIN POOL

SECTION 1. Inferior Raisin Pool. The Committee is hereby authorized to and it shall establish and maintain a pool of inferior raisins into which there shall be delivered and received all of each producer's inferior raisins.

SEC. 2. Facilities for Inferior Raisin Pool. The Committee may, with the prior approval of the Director, contract for or create, establish, or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market, and disposal of the contents of a pool of inferior raisins in such manner as to maintain stability in the markets and to dispose of such inferior raisins and any products derived therefrom.

SEC. 3. Pledging of Inferior Raisin Pool. The Committee or any agency thereof, with the prior approval of the Director, and upon securing title to the contents of a pool of inferior raisins, may pledge such raisins in order to finance such pool, subject to the provisions of this Marketing Program, as amended. The provisions of any such loan agreement shall take precedence over the provisions of this Article

with reference to the date on or before which the disposition of inferior raisins shall be completed.

SEC. 4. Disposal of Inferior Raisin Pool. Pursuant to this Section 4, the Committee shall sell or authorize the sale of inferior pool raisins as soon as practicable after delivery of same to the Committee or to any agency authorized by the Committee to receive such raisins. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins.

Inferior pool raisins shall be sold only for assured by-product and other diversion purposes, and shall not in any instance be sold into normal marketing channels; *provided, however*, that any sale or sales of inferior raisins for distillation shall be made only with the prior approval of the Director and then only if the surplus pool no longer contains any standard raisins and if such sales are at prices equivalent to average prices paid by vintners during the current marketing season for wine grapes of similar variety and quality. The Committee shall adopt and use such methods and procedure as it deems proper to satisfy itself that the conditions of this Section are fulfilled. A bond, penalty, or other financial guarantee as the Committee may require shall be given to insure proper performance of the provisions of this Article by each person receiving inferior raisins from the Committee or its agent.

All of the raisins held in an inferior raisin pool shall be sold or otherwise disposed of on or before May 31 of the marketing season in which such pool is established.

SEC. 5. Interest of Producers in Holdings of the Committee.

(a) **Accountability.** The Committee shall conduct its affairs in such manner that the details of each seasonal marketing program will be completed and final returns and settlement with respect to inferior raisins made to all producers within the shortest period of time possible and practicable within the provisions of this Marketing Program, as amended. The Committee shall render a full and complete accounting to each producer at the conclusion of each marketing season.

(b) **Annual Pool Records.** The detailed records relative to inferior raisin pools created by the Committee shall be kept on a marketing season basis to the end that separate accounting shall be made to producers for their equitable interests in the inferior pool created in each marketing season.

(c) **Equitable Interest of Producers.** The equitable interest of each producer in the holdings of the Committee shall be calculated upon a pro rata basis in accordance with the inferior raisin tonnage of each such producer. Such equitable interests shall be calculated separately for the inferior raisin tonnage of each marketing season to enable a separate accounting of the inferior raisin pool created in each marketing season. For the purpose of this Section, "holdings of the Committee" means the inferior raisin pool held by or for the Committee and the net proceeds from the sale, exchange, or other disposition

thereof by the Committee. The Committee shall from time to time distribute the cash "holdings of the Committee" ratably to all producers in accordance with their respective equitable interests therein, except that deductions shall be made from any such payment to a producer for any expenses incurred in establishing, maintaining, and disposing of such pool; *provided, however*, that upon the termination of this Marketing Program, as amended, any and all monies realized from the operations authorized herein and not required by the Committee to defray the expenses of such operations, shall be refunded by the Committee to producers forthwith upon a pro rata basis in accordance with their respective equitable interests in the inferior raisin pool, less such deductions as may be necessary to clear the account of each such producer with the Committee with respect to inferior raisins. The costs of establishing, maintaining, and disposing of the contents of an inferior raisin pool shall be met, in so far as possible, from the proceeds from the disposition thereof, and thereafter from the general funds of the Committee. The proceeds from such pool shall be charged only a fair pro rata portion of administrative expenses, as recommended by the Committee and approved by the Director, and such proceeds shall not be charged any portion of the expenses of any educational and trade stimulation program.

ARTICLE V

SURPLUS POOL

SECTION 1. Surplus Pool. The Committee is hereby authorized and empowered to establish and maintain a surplus pool into which there shall be delivered and received all of each producer's substandard raisins, together with such additional tonnage of standard quality raisins, if any, which are required to satisfy the surplus requirement of each such producer for the current raisin crop; *provided, however*, that the Committee may make provisions for the fulfillment by producers of surplus requirements by green diversion and the purchase of special certificates from producers who have green diverted more than their surplus requirements, pursuant to Article VII hereof; and *further provided*, that the Committee may authorize the partial or complete satisfaction of the surplus requirement of any producer, whose raisins have become damaged by rain or other causes beyond his control, by the destruction or by-product usage of such damaged raisins on the farming premises of such producer in a manner and upon the basis of a guarantee, financial or otherwise, acceptable to the Committee. Inferior raisins shall not qualify in fulfillment of the surplus requirement. Substandard raisins shall qualify in fulfillment of the surplus requirement to the extent that they are delivered and all substandard raisins shall be delivered into the surplus pool. The surplus requirement applicable to a given raisin crop shall be met by each producer regardless of the marketing season in which such raisins are first delivered by such producer.

SEC. 2. Facilities for Surplus Pool. The Committee may, with the prior approval of the Director, contract for, create, establish, or

otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market, and disposal of the contents of a surplus pool in such manner as to maintain stability in the markets and to dispose of such surplus and any of its derived products.

SEC. 3. Pledging of Surplus Pool. The Committee or any agency thereof, with the prior approval of the Director and upon securing title to the contents of a surplus pool, may pledge the contents thereof in order to finance such pool, subject to the provisions of this Marketing Program, as amended. The provisions of any such loan agreement shall take precedence over the provisions of this Article with reference to the date on or before which the disposition of the raisins in the surplus pool shall be completed.

SEC. 4. Disposal of Surplus Pool. Pursuant to this Section 4, the Committee shall sell or authorize the sale of surplus pool raisins as soon as practicable after delivery of same to the Committee or to any agency authorized by the Committee to receive such raisins; *provided, however,* that none of the standard raisins in such pool shall be sold or otherwise disposed of prior to January 1 of the marketing season in which such pool is established. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins. The Committee shall make provision whereby a producer who delivers raisins to a surplus pool may, within the shortest time practicable, buy the same or an equivalent grade of raisins, subject to regulations to be established by said Committee.

Surplus pool raisins shall be sold only for assured by-product and other diversion purposes, and shall not be sold into normal marketing channels; *provided, however,* that any sale or sales of surplus raisins for distillation shall be made only with the prior approval of the Director and then only if such sales are at prices equivalent to average prices paid by vintners during the current marketing season for wine grapes of similar variety and quality; and *further provided,* that if on or after November 1, but prior to February 1, of the marketing season in which such pool is created it shall appear, on the basis of available statistics, that the original estimates of carry-over, crop, and/or sales were not in accord with later facts or estimates and that an excessive quantity of raisins has been placed in such surplus pool, the Committee may, with the prior approval of the Director, transfer a sufficient quantity, if available, of the standard quality raisins from the surplus pool to the stabilization pool to offset the indicated excess in the surplus pool. Substandard raisins shall not be so transferred. Raisins so transferred shall thereafter be handled and disposed of in accordance with Article VI of this Marketing Program, as amended. The Committee shall adopt and use such methods and procedure as it deems proper to satisfy itself that the conditions of this Section are fulfilled. A bond, penalty, or other financial guarantee acceptable to the Committee shall be given in guarantee of the

proper performance of the provisions of this Article by each person receiving surplus raisins from the Committee or its agent.

All of the raisins held in a surplus pool shall be sold or otherwise disposed of on or before July 15 of the marketing season next succeeding the marketing season in which such pool is established.

The Committee may authorize the substitution of standard or substandard raisins in the possession of a producer for standard quality raisins in the surplus pool, subject to costs, corrections in pool credits and equitable interests, and other pertinent transactions in accordance with regulations and a schedule of differentials to be issued by said Committee. Furthermore, in the case of a producer whose substandard raisin tonnage exceeds the surplus requirement of such producer, the Committee may authorize the delivery to such producer of standard quality raisins from the surplus pool in a quantity based on the tonnage by which his substandard raisins exceed his surplus requirement, subject to costs, corrections in pool credits and equitable interests, and other pertinent transactions in accordance with regulations and a schedule of differentials to be issued by the Committee with the approval of the Director, the Committee may use standard raisins remaining in the surplus pool in lieu of monies in payment for green diversion properly performed and duly certified by the Committee or its agent.

Sec. 5. Interest of Producers in Holdings of the Committee.

(a) **Accountability.** The Committee shall not engage in any activities other than those authorized in this Marketing Program, as amended, and shall in all matters act in accordance with that procedure which in its judgment is in the best interests of all producers. The Committee shall conduct its affairs in such manner that the details of each seasonal marketing program will be completed and final returns and settlement made to all producers within the shortest period of time possible and practicable within the provisions of this Marketing Program, as amended. The Committee shall render a full and complete accounting to each producer at the time of making final returns and settlement.

(b) **Annual Pool Records.** The detailed records relative to surplus pools created by the Committee shall be kept on a marketing season basis to the end that separate accounting shall be made to producers for their equitable interests in the surplus pool created in each marketing season.

(c) **Equitable Interest of Producers.** The equitable interest of each producer in the holdings of the Committee shall be calculated upon a pro rata basis in accordance with the surplus and/or substandard tonnage of each such producer, with adequate and proper differentials for variety and grade, and less deductions for any payments or advances or substitutions made by the Committee to such producer for surplus and/or substandard pool tonnage. Such tonnage shall be the sum of the surplus and/or substandard tonnage received into the surplus pool by the Committee from each such producer and the surplus tonnage certified by the Committee as green diversion by each such producer, together with the tonnage of damaged raisins destroyed or used on the producer's farming premises pursuant to

Section 1 of this Article, with due allowance for any substitutions authorized by said Committee.

The schedule of differential credits on the basis of variety and grade shall be recommended by the Committee and approved by the Director before any advance payments or final payments are made to producers on account of such equitable interests. Such equitable interests shall be calculated separately for the surplus and/or substandard tonnage of each marketing season to enable a separate accounting of the surplus pool created in each marketing season. For the purpose of this Section, "holdings of the Committee" means the surplus pool held by or for the Committee and the net proceeds from the sale, exchange, or other disposition thereof by the Committee. The Committee shall from time to time distribute the cash "holdings of the Committee" ratably to all producers in accordance with their respective equitable interests therein, except that deductions shall be made from any such payment to a producer for any monies owed to the Committee by such producer with respect to surplus tonnage; *provided, however*, that upon the termination of this Marketing Program, as amended, any and all monies realized from the surplus and/or substandard control operations authorized herein and not required by the Committee to defray the expenses of such operations, shall be refunded by the Committee to producers forthwith upon a pro rata basis in accordance with their respective equitable interests in the surplus pool, less such deductions as may be necessary to clear the account of each such producer with the Committee. The costs of establishing, maintaining, and disposing of the contents of a surplus pool shall be met from the proceeds of the disposition thereof. The proceeds from such pool shall be charged only a fair pro rata portion of administrative expenses, as recommended by the Committee and approved by the Director, and such proceeds shall not be charged any portion of the expenses of any educational and trade stimulation program; *provided, however*, that the foregoing shall not exempt surplus raisins from any approved certificate fees for administrative expenses.

ARTICLE VI

STABILIZATION POOL

SECTION 1. Stabilization Pool. The Committee is hereby authorized and empowered to establish and maintain a stabilization pool into which there shall be delivered and received the stabilization percentage of each producer's crop of standard quality raisins other than the raisins of standard quality which have been placed in the surplus pool; *provided, however*, that the Committee may make provisions for the fulfillment by producers of stabilization requirements by green diversion, pursuant to Article VII hereof; and *further provided*, that any Muscat layer raisins in clusters which are delivered to a receiving station on or before December 1 of the current marketing season shall be exempted from the stabilization requirement. Substandard or inferior raisins shall not be placed in such stabilization

pool. The stabilization requirement applicable to a given raisin crop shall be met by each producer regardless of the marketing season in which such raisins are first delivered by such producer.

SEC. 2. Facilities for Stabilization Pool. The Committee may, with the prior approval of the Director, contract for or create, establish, or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market, and disposal of the contents of a stabilization pool in such manner as to maintain stability in the markets and to dispose of the contents of such stabilization pool.

SEC. 3. Pledging of Stabilization Pool. The Committee or any agency thereof, with the prior approval of the Director, and upon securing title to the contents of a stabilization pool, may pledge the contents or any portion thereof as collateral for loans on such stabilization tonnage, subject to the provisions of this Marketing Program, as amended, for the financing of such stabilization pool only and for securing funds to enable advances to growers for the raisins delivered to such pool. Furthermore, the Committee may, with the prior approval of the Director, authorize special pooling arrangements with the Federal Government for the purposes of encouraging the exportation of such stabilization tonnage and/or diversion of such tonnage from normal channels of trade, including distribution of such raisins to persons on relief. Such special arrangements may include the creation of a special pool out of a portion of the stabilization tonnage. The provisions of any such loan agreement shall take precedence over the provisions of this Article relative to the date on or before which the disposition of the raisins in the stabilization pool shall be completed.

SEC. 4. Disposal of Stabilization Pool. Pursuant to this Section 4 the Committee shall sell or authorize the sale of stabilization pool raisins as soon as practicable after delivery of same to the Committee, or to any agency authorized by the Committee to receive such raisins, in such manner as to maintain stability in the markets and to dispose of such raisins. The procedure relative to the disposition of such raisins and the provisions of the contract of sale shall be established by the Committee with the prior approval of the Director; *provided, however*, that all packers of record with the Program Committee shall be given uniform notice of offers to sell stabilization pool raisins and, if allocation of tonnage among packers becomes necessary, such allocation shall be made under uniform rules, which are equitable as to all packers participating in offers to purchase, as formulated by the Committee and approved by the Director. The sale of such raisins shall be made in accordance with the methods and at the prices which in the judgment of the Committee or its authorized agency and the Director are the most advantageous to the producers of such raisins; *provided, however*, that no sales of raisins from a stabilization pool, other than such raisins which are subject to special loaning or pooling arrangements with the Federal Government, shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale.

Stabilization pool raisins shall be sold only into normal marketing channels; *provided, however*, that if on or after November 1, but prior to February 1, of the marketing season in which such pool is created it shall appear, on the basis of available statistics, that the original estimates of carry-over, crop, and/or sales are not in accord with later facts or estimates and that an inadequate quantity of raisins has been placed in the surplus pool, the Committee may, with the prior approval of the Director, transfer a sufficient quantity of the lowest quality raisins from the stabilization pool to the surplus pool to offset the indicated inadequacy in the surplus pool, to thereafter be handled and disposed of in accordance with Article V of this Marketing Program, as amended; and *further provided*, that if special pooling arrangements have been made with the Federal Government in connection with export and/or diversion outlets for such stabilization raisins; in accordance with Section 3 of this Article, the foregoing requirement that stabilization pool raisins shall be sold only into normal marketing channels shall not be applicable with respect to stabilization pool raisins subject to such special pooling arrangements.

All of the raisins held in a stabilization pool shall, if possible, be sold on or before November 1 of the marketing season next succeeding the marketing season in which such pool is established. Any raisins remaining in such stabilization pool after such date shall be immediately transferred to the surplus pool. In the disposal of any stabilization pool created by the Committee, effort shall be made by said Committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor.

SEC. 5. Interest of Producers in Holdings of the Committee.

(a) **Accountability.** The Committee shall not engage in any activities other than those authorized in this Marketing Program, as amended, and shall in all matters act in accordance with that procedure which, in its judgment, is in the best interests of all producers. The Committee shall conduct its affairs in such manner that the details of each seasonal marketing program will be completed and final returns and settlement made to all producers within the shortest period of time possible and practicable within the provisions of this Marketing Program, as amended. The Committee shall render a full and complete accounting to each producer at the time of making such final return and settlement.

(b) **Annual Pool Records.** The detailed records relative to stabilization pools created by the Committee shall be kept on a marketing season basis to the end that separate accounting shall be made to producers for their equitable interests in the stabilization pool created in each marketing season.

(c) **Equitable Interest of Producers.** The equitable interest of each producer in the holdings of the Committee shall be calculated upon a pro rata basis in accordance with the stabilization tonnage of each such producer, with adequate and proper differentials for variety and grade, and less deductions for any payments or advances

made by the Committee to such producer for stabilization pool-tonnage. Such stabilization tonnage shall be the sum of the stabilization tonnage received by the Committee from each such producer and the stabilization tonnage certified by the Committee as green diversion by each such producer.

The schedule of differential credits on the basis of variety and grade shall be recommended by the Committee and approved by the Director before any advance payments or final payments are made to producers on account of such equitable interests. Such equitable interests shall be calculated separately for the stabilization tonnage of each marketing season to enable a separate accounting of the stabilization pool created in each marketing season. For the purpose of this Section, "holdings of the Committee" means the stabilization pool held by or for the Committee and the net proceeds from the sale, exchange, or other disposition thereof by the Committee. The Committee shall from time to time distribute the cash "holdings of the Committee" ratably to all producers in accordance with their respective equitable interests therein, except that deductions shall be made from any such payment to a producer for any monies owed to the Committee by such producer; *provided, however*, that upon the termination of this Marketing Program, as amended, any and all monies realized from the stabilization operations authorized herein and not required by the Committee to defray the expenses of such operations, shall be refunded by the Committee to producers forthwith upon a pro rata basis in accordance with their respective equitable interests therein, less such deductions as may be necessary to clear the account of each such producer with the Committee. The costs of establishing, maintaining, and disposing of the contents of a stabilization pool shall be met from the proceeds of the disposition thereof. The proceeds from such pool shall be charged only a fair pro rata portion of administrative expenses, as recommended by the Committee and approved by the Director; *provided, however*, that the foregoing shall not exempt stabilization raisins from the approved certificate fees and any equalization and trade stimulation assessments.

ARTICLE VII

GREEN DIVERSION

SECTION 1. **Creation of Voluntary Green Diversion Plan.** The Committee is hereby authorized and empowered to provide that the green diversion of grapes by producers be permitted as an alternative method, in order to minimize an estimated surplus of raisins, by which producers may satisfy a part of, or all of, their surplus and/or stabilization requirement, or by which producers, desirous of so doing, may green divert their entire production.

The Committee shall, not later than June 15 of each year, set forth, with prior approval of the Director, the rules and regulations which shall govern the operations of any green diversion plan. July 15 shall be the latest date in any year upon which green diversion may be performed under such plan.

SEC. 2. Contracts for Green Diversion. The Committee may contract for, or approve, the diversion of grapes by producers who have complied with the rules and regulations set forth by the Committee; *provided, however,* that the Committee shall not contract for or approve, in the aggregate, the green diversion of a quantity of grapes of which the estimated equivalent raisin tonnage is in excess of the estimated raisin surplus for the season then current, as determined pursuant to Article III hereof.

SEC. 3. Payment of Green Diversion Costs. The Committee may contract for or approve, the green diversion of grapes from which, in the opinion of the Committee, raisins might reasonably be made, and shall have the right to offer payment to growers for such green diversion activities.

(a) **Source of Funds.** The Committee may utilize the Equalization Fund provided for in Article VIII hereof to purchase grapes offered for green diversion by producers in accordance with the procedure established in Section 4 of this Article VII, and to defray the pro rata administrative and other proper costs of such green diversion program, as approved by the Director. In lieu of or in addition to such method, the Committee, with the approval of the Director, may use standard raisins remaining in the surplus pool in payment for green diversion.

(b) **Rate of Payment.** The Committee shall set forth, not later than June 15 and with prior approval of the Director, the rate of payment, if any, per ton to be offered to producers for green diversion.

SEC. 4. Regulation of Green Diversion.

(a) **Application.** Each producer who desires to green divert any portion of his total production shall first make written application to the Committee, using an application blank supplied by the Committee, for approval of such green diversion.

(b) **Appraisal.** As soon as is practicable after the receipt of a producer's application to green divert a part of or his entire crop of grapes, agents authorized by the Committee shall make an appraisal of the producer's entire production and of the portion offered for green diversion, which portion shall not be less than the production from the minimum number of acres which the Committee deems it advisable to approve. Such agents shall appraise each producer's production for grade and tonnage pursuant to Article X hereof. In every instance if the producer accepts the appraisal he shall do so in writing on a form provided by the agent.

The Committee shall appoint for each district a review committee of five (5) local producers whose duty it shall be to arbitrate and settle any differences of opinion which may arise between appraisal agents and producers in connection with green diversion appraisal. In the event the producer does not assent to the final decision of the district review committee as to the estimated grade and tonnage of the grapes to be involved in such green diversion, the Committee shall not approve such producer's application to green divert. The producer shall bear the cost of such appraisal service, as determined by the Committee.

(c) **Supervision.** Green diversion shall be performed under the supervision of an agent or agents of the Committee in a manner uniform as to all producers for whom an application for green diversion has been finally approved by the Committee. In so far as practicable, the Committee shall undertake to encourage the green diversion of grapes which, in the opinion of the Committee, are of the least desirable varieties or grades for drying purposes. The Committee shall not recognize the performance of green diversion until it is established to the Committee's satisfaction that the grapes so diverted can not be recovered for any commercial use.

(d) **Approval.** The Committee, after receipt of green diversion applications, may approve the green diversion of grapes by producers for:

(1) A part of, or all of, a producer's surplus requirement, and shall issue to such producer a certificate of green diversion which shall set forth the portion of such producer's surplus requirement which has been satisfied by such green diversion.

(2) All of a producer's surplus requirement and a part of, or all of, a producer's stabilization requirement, and shall issue to such producer a certificate of green diversion which shall set forth the producer's surplus requirement and the portion of such producer's stabilization requirement which has been satisfied by such green diversion.

(3) The entire production of a producer, and shall issue to such producer a certificate of green diversion which shall set forth the surplus requirement and the stabilization requirement which have been satisfied by such green diversion.

SEC. 5. Alternative or Additional Method. In lieu of, or in addition to, a green diversion program based on purchases or advances to producers by the Committee, the Committee may provide for the green diversion by a producer between June 15 and July 15, inclusive, in any year, of more than such producer's surplus requirement on the basis of a plan of certificate sale and exchange between producers. In such event, the Committee, or its agent or agents, shall first make such arrangements as may be necessary to assure itself that the producer so diverting can and will sell the special certificates to be issued by the Committee for the diversion of the tonnage in excess of such producer's surplus requirement to one or more other producers for an amount to be mutually agreed upon by the seller and the buyer thereof. The purchasers of such certificates shall, through arrangements of the Committee, be contractually bound to such purchase before the Committee grants approval for such additional or excess green diversion. Purchases of such special certificates by a producer shall be limited to that portion of the surplus requirement of such purchasing producer which has not been met either by green diversion or by delivery of raisins to the surplus pool. The purchaser of such special certificates shall by such purchase and to the extent represented by the tonnage covered by such certificates be considered to have met his surplus requirement and may, upon payment of the established fees and assessment, market an equivalent tonnage of standard raisins as

salable tonnage, which such tonnage shall be in addition to the salable tonnage otherwise certificated for such purchaser; *provided, however*, that under no circumstances shall such purchaser be authorized to fulfill his stabilization requirement by any method other than by delivery of raisins to the stabilization pool, by green diversion, or by a combination of such methods; and *provided, further*, that under any plan or combination of plans of green diversion, the Committee shall not approve, in the aggregate, the green diversion of a quantity of grapes of which the estimated equivalent raisin tonnage is in excess of the estimated raisin surplus for the season then current, as determined pursuant to Article III hereof.

SEC. 6. Accountability. The Committee shall maintain such books and records as may be necessary to render a full and complete statement relative to all of the operations of the green diversion plan. Such books and records shall clearly set forth any and all interests or obligations of producers participating in such green diversion plan for the purpose of enabling a final settlement to all producers upon a basis equitable under this Marketing Program, as amended, as to all producers.

ARTICLE VIII

EQUALIZATION FUND

SECTION 1. Establishment of Equalization Fund. In order to provide funds by which the Committee may purchase or indemnify producers for raisin grapes which are green diverted and to adjust inequities in payments to producers for pool tonnages, the Committee may, by assessment, and with the prior approval of the Director, create, maintain, and disburse an Equalization Fund. Any assessment levied to create an Equalization Fund shall be uniform as to all producers, shall be on the basis of a fixed amount per ton, and shall be levied upon both the salable and stabilization portions of each producer's total production of raisins as determined by the Committee. The green diversion of all or a part of such salable and stabilization portions shall not exempt the producer so diverting from paying the established equalization assessment. Such assessment shall be so calculated as to produce a sum sufficient to provide funds for the purposes for which such Equalization Fund is created.

SEC. 2. Utilization of Equalization Fund. The Committee may use the Equalization Fund, with the prior approval of the Director, to purchase grapes at a uniform price from producers who have contracted with the Committee, or its agent or agents, to green divert grapes which in the opinion of the Committee might reasonably be made into raisins. Such purchases shall be made for the purpose of indemnifying producers whose production, in whole or in part, is diverted from its normal marketing outlets.

In no instance shall the funds raised by the Equalization Fund assessment be used for purposes other than those for which they were levied as set forth in this Article VIII, and any allocation of general administrative charges against such Fund shall be only upon a fair

pro rata basis; as recommended by the Committee and approved by the Director.

SEC. 3. - Accountability for Equalization Fund.

(a) **Annual Purchase Records.** The Committee shall maintain such books and records as may be necessary to render, as soon as possible, and practicable after the completion of all purchases of grapes for green diversion, a full and complete accounting for the fund raised by the assessment of producers as provided for in Section 1 of this Article VIII.

(b) **Refunds.** If such fund is in excess of the amount used in the purchasing of grapes and the administrative costs related thereto, the excess amount may be refunded to producers on a pro rata basis, in accordance with the amounts contributed to such Equalization Fund by each producer through the payment of such assessment as may be levied pursuant to this Article, or such excess amount, with the approval of the Director, may be withheld for use in the succeeding marketing season; *provided, however*, that in the event of the termination of this Marketing Program, as amended, any such excess funds shall be refunded forthwith to producers who contributed thereto in proportion to their respective contributions.

ARTICLE IX

TRADE STIMULATION

SECTION 1. **Trade Stimulation.** The Committee is hereby authorized and empowered, subject to the approval of the Director, to establish plans for appropriate educational and trade stimulation efforts to broaden distribution and increase consuming outlets; *provided, however*, that any such plans shall be directed toward increasing the sale of raisins without reference to a particular brand or trade name and *provided, further*, that no educational and trade stimulation program shall be issued which shall make use of false or unwarranted claims on behalf of raisins, or disparage the quality, value, sale, or use of any other food product.

SEC. 2. **Administration of Trade Stimulation Program.** In the event that an educational and trade stimulation program is to be issued, the Committee shall consider in detail and submit to the Director for his approval such plans for educational and trade stimulation efforts as are specified in and as are in accordance with Section 1 of this Article. The monies collected for educational and trade stimulation purposes pursuant to Article XI of this Marketing Program, as amended, shall be disbursed strictly in accordance with said plans, and the budget therefor, as submitted by the Committee and approved by the Director.

ARTICLE X

RECEIVING STATIONS AND INSPECTION AND GRADING

SECTION 1. **Receiving Stations.** The Committee shall establish or designate receiving stations within the various districts of the

Zone to which all raisins which producers desire to prepare for market and/or market shall be delivered by producers for inspection and grading, for the application of the established surplus and/or stabilization percentages to the tonnage of standard and substandard raisins in each delivery so made by a producer, and the retention by the Committee of the indicated inferior, surplus, and stabilization pool tonnages. At such time, and upon fulfillment of the inferior, surplus, and stabilization requirements pertaining to such individual delivery of raisins, the salable percentage, as determined by the Committee, of the tonnage of standard raisins so delivered by a producer, other than the standard raisin tonnage of such producer which is placed in the surplus pool, shall be properly certificated as the producer's salable tonnage of raisins in such individual delivery.

SEC. 2. Inspection and Grading of all Deliveries of Raisins. In accordance with the seasonal marketing program approved pursuant to Article III of this Marketing Program, as amended, all raisins shall be inspected and graded in accordance with the grades and the inspection and grading regulations established by the Committee pursuant to Section 4 of this Article. There shall be an inspector, employed and authorized by the Committee, at each receiving station, who shall issue an inspection and grading certificate for each delivery of raisins made by a producer to such receiving station. Such inspection and grading certificates shall be serially numbered and shall set forth the date of inspection and grading, the producer's name and address, the variety or varieties of such raisins, the net weight and grade or grades of the respective varieties of such raisins, the respective varieties, grades, and weights of raisins in each delivery which are withheld for the inferior, surplus, and stabilization pools, and such other information as the Committee may deem necessary to effectuate the objectives and purposes of this Marketing Program, as amended.

SEC. 3. Inspection and Grading of Grapes for Green Diversion. In connection with each approved application by a producer for green diversion privileges pursuant to Article VII hereof, the Committee shall cause such green diversion to be supervised by its duly authorized agent or agents, and such grapes shall be inspected and graded by an inspector authorized by the Committee.

In determining the grade of grapes for green diversion, cognizance shall be taken, in so far as possible, of the grade of raisins which might reasonably be made from such grapes. In addition, an estimate shall be made of the tonnage of grapes involved in each such application, which estimate shall be assented to in writing by the producer of such grapes; *provided, however*, that no part or parts of this or other Articles of this Marketing Program, as amended, shall be construed to make it mandatory that the Committee approved each or any such application by a producer for green diversion privileges. The Committee shall appoint, for each district, a review committee of five (5) local producers to adjust differences of opinion upon estimated grades and tonnages. In the event that the producer does not assent to the final decision of the district review committee as to the estimated grade and tonnage of the grapes to be involved in such green diversion, the Com-

mittee shall not approve such producer's application for green diversion privileges.

A certificate of green diversion shall be issued for each approved application, which certificate shall set forth information comparable to that required on the inspection and grading certificate provided for in Section 2 of this Article, and which shall set forth, in addition, the estimated tonnages of raisins by varieties and grades which might reasonably be made from such grapes, and the producer's assent to the estimates and information set forth on such certificate of green diversion.

SEC. 4. Grades and Inspection and Grading Regulations. Annually and prior to the earliest date upon which any deliveries of raisins will be made, but in no event sooner than the date upon which the Director approves the report required by Section 1 of Article III hereof, the Committee shall establish and declare effective the grades and the rules, regulations, and procedure under which the inspection and grading required by this Article shall be conducted and performed. The Committee shall establish a standard grade, and all substandard raisins in each delivery shall be placed in the surplus pool. Such inspection and grading shall be as simple and direct as is commensurate with the effectuation of the purposes and objectives of this Marketing Program, as amended.

Provisions shall be made in the inspection and grading procedure for the issuance of the necessary certificates and the collection from each producer of the fees and assessment established pursuant to Articles VIII and XI hereof. Such procedure shall likewise provide for the diversion of all inferior raisins in each delivery to the inferior raisin pool, pursuant to Article IV hereof, and for the diversion of all substandard raisins in each delivery to the surplus pool, pursuant to Article V hereof.

ARTICLE XI.

CERTIFICATES, FEES, AND BUDGETS

SECTION 1. Certificates.

(a) **Primary Certificates.** One Primary Certificate shall be issued by the Zone Agent to each producer; such Certificate shall indicate the name, the address, the approximate acreage of grapes from which the producer would normally produce raisins during the current marketing season, and such other information which the Committee may require.

(b) **Secondary Certificates.** Secondary Certificates shall be issued to control the time and volume of movement of salable raisins into the primary channels of trade. One or more Secondary Certificates shall be issued to each holder of a Primary Certificate, and shall accompany all deliveries of salable raisins into a primary channel of trade. Secondary Certificates shall not be negotiable between producers except with the approval of the Committee and the Director. Cooperative associations and other marketing agencies entitled to the possession of agricultural commodities for marketing purposes shall

be authorized in writing by the Committee to receive certificates for producers represented by such agencies and to represent the respective producers of such agencies when proration is applied to raisins while in the possession of such agencies.

(c) **Issuance of Secondary Certificates.** Secondary Certificates shall be issued to producers at the time of delivery of raisins by producers for subsequent inspection, grading, certification, and diversion of the uniform pool percentages of the delivery to the pool or pools established by the Committee. Delivery of all raisins shall be made by producers to the receiving stations established and/or designated by the Committee, pursuant to Article X hereof, or to a cooperative association authorized in writing by the Committee to act for the Committee as a receiving station; *provided, however,* that the Committee shall authorize and permit the concentration of the tonnage of producers who are members of a non-profit cooperative marketing association in accordance with the usual practice of such cooperative prior to the application of proration, but such authorization and permission shall be granted solely on the condition that proration will be and is applied at the point of concentration and prior to any other or further handling of the raisins.

SEC. 2. **Fees.** (a) Primary and Secondary Certificates shall be issued only after the payment to the Zone Agent or his agent of the reasonable and proportional fees for either or both such Certificates fixed by the Committee and approved by the Director. The fees shall be so calculated as to produce an amount necessary to meet the expenses of the administration and enforcement of the seasonal marketing program, for funds required for the purposes specified in such program, as approved by the Director, and a proper proportion, in accordance with the Act, of the cost of the maintenance of the Commission and of the Department of Agriculture in the performance of the duties required in connection with this Marketing Program, as amended; *provided, however,* that in fixing such fees due cognizance shall be taken of such deductions for estimated expenses as may be made from any advances made to producers for pool tonnage.

(b) If an educational and trade stimulation program is recommended by the Committee and approved by the Director, pursuant to Article IX hereof, the estimated expenses and costs thereof shall be met from funds obtained from certificate fees and from deductions made from the proceeds of sale or from any advances made to producers for stabilization pool tonnage. In such event and prior to the collection of any such fees or the making of any such deductions, the Committee shall determine and announce, with the approval of the Director, the exact amount of such certificate fees and deduction which shall be assessed for educational and trade stimulation purposes and the exact amount of such fees and deduction which shall be assessed for all other purposes authorized in the annual program approved by the Director; *provided, however,* that the fee which may be assessed and collected from producers for such educational and trade stimulation purposes shall not exceed two dollars (\$2.00) per ton upon all tonnage of standard quality raisins marketed by each producer in normal marketing channels for consumption as raisins.

The foregoing segregation of the certificate fees and deduction shall in effect create separate and distinct funds which shall be deposited, expended, audited, and accounted for separately, and in no case shall the funds so collected be used for any purposes other than those for which they were collected, as evidenced and conclusively demonstrated by the announced segregation of such fees and deduction, in accordance with this Subsection (b). Educational and trade stimulation funds so allocated shall not thereafter be charged any of the expenses of administration, enforcement, pools, or Committee activities.

(c) In the event that the Committee authorizes a cooperative association or other marketing agency to receive certificates for producers represented by such agency, said Committee shall contract with such agency for payment of the fees due upon any and all tonnage delivered by producers to such agency.

SEC. 3. Annual Budgets.

(a) **Administrative Budget.** Annually on or before August 1 the Zone Agent shall, at the direction of and subject to the approval of the Committee, prepare a detailed budget of estimated expenses for all purposes authorized herein except the estimated expenses of any educational and trade stimulation program which may be approved by the Director. Such budget shall be based upon the approved seasonal marketing program and basis of assessment, with full consideration of any equalization assessment which may be approved and any segregation which may be required in certificate fees and deductions from any advances made to producers for stabilization pool tonnage by virtue of an approved educational and trade stimulation program. Adequate provision shall be made for miscellaneous financial contingencies. The Committee shall recommend such budget to the Director for his approval.

(b) **Trade Stimulation Budget.** In the event that the Committee recommends to the Director the establishment of an educational and trade stimulation program, there shall be submitted with such recommendation a proposed budget in detail covering the estimated expenses of such program. Such budget shall be prepared upon the basis of the estimated amount of funds to be made available by the approved segregation of certificate fees and deductions from advances on stabilization pool tonnage. Such budget shall be recommended by the Committee to the Director for his approval.

SEC. 4. **Bonds.** No agent of the Committee shall have or receive any funds whatever collected pursuant to the provisions of this Marketing Program, as amended, until there shall have been filed and maintained with the Secretary of State of the State of California, in the manner prescribed by law, by such agent of the Committee an official bond in such penal sum as may be prescribed by the Director.

SEC. 5. **Refunds.** At the end of each marketing season and after payment of all of the costs of the operation of the program, if the certificate fees for administrative expenses collected during the season and still remaining for the use of the Committee exceed ten

per cent (10%) of such fees collected during the season, such excess funds shall be disbursed to producers who contributed thereto in proportion to their contribution; *provided, however*, that in the event of the termination of this Marketing Program, as amended, any such funds remaining for the use of the Committee not otherwise disposed of by the provisions of this Section 5 shall be deposited in the State Treasury of California to the credit of the Department of Agriculture Fund.

ARTICLE XII

BOOKS, RECORDS, AND FACILITIES

SECTION 1. Books, Records, and Facilities. The Director through his duly authorized representatives and agents, including the Zone Agent in charge of this Marketing Program, as amended, shall have access, solely for the purpose of investigating possible violations of this Marketing Program, as amended, to the records of producers, dealers, distributors, public and private property transportation agencies, and handlers of raisins, and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores and transportation facilities and other places in which raisins are kept, stored, handled or transported.

SEC. 2. Subpoenas and Testimony. For the purpose of administering and enforcing the provisions of the Act and of this Marketing Program, as amended, the Director may adopt such necessary rules and regulations as he may, from time to time, deem advisable and shall conduct any hearing, inquiry or investigation which the Director has power to undertake or hold. In the conduct of any such hearing, inquiry or investigation the Director shall have power to administer oaths, and issue subpoenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation or hearing ordered or undertaken in any part of the State. The superior court of the county or city and county in which any such inquiry, investigation or hearing may be held shall have power to compel the attendance of witnesses and to require the disclosure by such witnesses of all facts known to them, relative to the matters under investigation, and the production of papers, maps, books, accounts, documents and testimony as required by any subpoenas issued by the Director.

SEC. 3. Confidential Information. Any and all information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be disclosed except when required in a judicial proceeding.

SEC. 4. Reports to Director. In order to make available to the Director and the Committee facts and data relative to supplies of raisins on hand, quantities sold, selling prices, and other information necessary to the making of accurate and complete findings as required in Article III hereof, the Director may receive or obtain from each producer or handler of raisins, pursuant to the provisions of this Article, such

information and data as the Director finds are essential to the effectuation of the Act and of this Marketing Program, as amended, with respect to raisins; *provided*, that any such data or information so received or filed with the Director by any producer or handler of raisins shall not be made available by the Director in such manner as to reveal the identity of such information or data as to any such producer or handler, but such data or information may be made available to the Committee by the Director in combined or summarized form.

ARTICLE XIII

APPEALS

SECTION 1. **Appeals.** Any producer may petition the Director to review any order or decision of the Committee. Any such petition must be filed in writing, setting forth the facts upon which it is based.

SEC. 2. **Effect of Appeal.** Pending the disposition of any appeal set forth in accordance with Section 1 of this Article, the parties shall abide by the order or decision of said Committee, unless the Director shall rule otherwise. The Director shall, if the facts stated show reasonable grounds, grant any such petition and may review or revise in any manner whatsoever any order or decision upon which an appeal is taken, subject to the provisions of this Marketing Program, as amended, and of the Act.

SEC. 3. **Judicial Review.** Any order of the Director instituting a proration program and any other order of the Commission or Director substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within thirty (30) days after the effective date of the order complained of.

ARTICLE XIV

AGENTS

SECTION 1. **Agents.** The Director may, by designation in writing, name any person or persons, including officers or employees of the State Department of Agriculture, to act as his agent or agents, with respect to any provisions of this Marketing Program, as amended.

ARTICLE XV

RELATION TO OTHER MARKETING PROGRAMS AND OTHER LEGISLATION

SECTION 1. **Relation to Other Marketing Programs.** The Committee shall be and is hereby empowered to collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other states or of the United States, in the formulation and execution of a common marketing program; *provided*, that in proper cases the Commission may require such collaboration and cooperation. The Director may exercise any administrative authority prescribed by

the Act and by this Marketing Program, as amended, to effect uniformity and coordination in the administration of any and all laws, regulations, licenses or orders of this State, other states or of the United States, which directly or indirectly affect raisins.

Sec. 2. Relation to Other Legislation. The Committee may minimize an existing surplus by cooperating with the proper agencies in the enforcement of applicable existing standardization or other laws of this State, and of the United States, enacted to protect the consuming public from fraud or deception.

ARTICLE XVI

PURCHASES BY FEDERAL GOVERNMENT

SECTION 1. Purchases by Federal Government. Any provisions of this Marketing Program, as amended, notwithstanding, the Committee is hereby empowered to and it shall make any and all arrangements possible to move pool raisins into noncompetitive channels with the aid and assistance of the Federal Surplus Commodities Corporation or any other governmental agency; *provided, however*, that such disposition shall not be allowed to substantially curtail the quantity of raisins which may be sold into normal marketing channels.

ARTICLE XVII

SEPARABILITY

SECTION 1. Separability. If any section, subsection, clause, phrase, or other part of this Marketing Program, as amended, is for any reason held to be invalid, or the applicability thereof to any person, circumstance, or thing is held to be invalid, such decision shall not affect the remaining portions of this Marketing Program, as amended.

ARTICLE XVIII

AMENDMENTS

SECTION 1. Amendments. This Marketing Program, as amended, after being in effect, may be altered or modified in accordance with the provisions of the Act.

ARTICLE XIX

VIOLATIONS

SECTION 1. Violations. Any person who violates any provision of this Marketing Program, as amended, or who violates any rule or regulation adopted by the Committee and approved by the Director shall be liable civilly in an amount not to exceed a sum of five hundred dollars (\$500.00) for each and every violation to be recovered by the Director or by the Zone in an action brought with the approval

of the Director in any court of competent jurisdiction. All sums recovered under this Section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

ARTICLE XX

RULES AND REGULATIONS

SECTION 1. Rules and Regulations.

(a) The Director shall have power to establish such rules and regulations consistent with the Act as may be necessary to carry out the purposes and attain the objectives thereof.

(b) The exercise of the powers granted to the Committee in its administration of this Marketing Program, as amended, shall be subject to the approval of the Director; *provided, however*, that if the Director finds such powers conform with the provisions of this Marketing Program, as amended, and of the Act he shall approve such exercise.

ARTICLE XXI.

EFFECTIVE TIME AND TERMINATION

SECTION 1. **Effective Time.** This Marketing Program, as amended, shall become effective on the date specified by the Commission and shall continue in effect as long as the Act remains in effect, unless sooner amended, terminated, or suspended in accordance with the provisions of the Act.

SEC. 2. **Termination by Petition.** This Marketing Program, as amended, shall be terminated by the Commission if upon hearing it shall be established that an application for termination has been signed by not less than forty per cent (40%) of the raisin producers and by the owners of forty per cent (40%) of the producing factors within the Zone, and that the purposes of the Act and the objectives thereof are no longer effectuated by this Marketing Program, as amended; *provided, however*, that this Marketing Program, as amended, shall not be terminated except at the end of the then current marketing season.

SEC. 3. **Termination or Suspension by the Commission.** The Director, on behalf of the Commission, may at any time initiate an investigation to determine whether or not the facts specified in Section 10 of the Act continue to exist with respect to this Marketing Program, as amended. Upon a finding that any one or more of the prerequisite facts no longer exist, the Commission shall terminate or suspend this Marketing Program, as amended; *provided, however*, that this Marketing Program, as amended, shall not be terminated except at the end of the then current marketing season.

SEC. 4. **Effect of Termination, Suspension, or Amendment.** Unless otherwise expressly provided in the notice of amendment,

suspension, or termination, no amendment, suspension, or termination of this Marketing Program, as amended, shall either:

(a) Affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise, in connection with any other provision of this Marketing Program, as amended, not so amended, suspended or terminated; or

(b) Release, condone, or dismiss any violation of this Marketing Program, as amended, occurring prior to the effective time of such amendment, suspension, or termination; or

(c) Affect or impair any rights or remedies of the Commission, the Director or of any other person with respect to such violation.

EXHIBIT "2".**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION**

No. 78. Civil.

PORTER L. BROWN, *Plaintiff*,*vs.*

W. B. PARKER, Director of Agriculture; AGRICULTURAL PRORATE ADVISORY COMMISSION, RAISIN PRORATION ZONE #1, PROGRAM COMMITTEE, W. B. PARKER, IRA REDFERN, LYMAN LANTZ, JAMES LANGFORD, MARK G. JOHNSON, C. M. BROWN, WM. F. DARSIE, DR. DEAN MCHENRY, PRESTON MCKENNEY, H. C. ANDERSON, A. K. KELLY, RENALD MASTROFINI, ALEX BERG, MESROB MIRIGIAN, MELCHIOR HANSEN, A. L. DAVIDSON, W. J. CECIL, J. C. HARLAN, One Doe, Two Doe, Three Doe, Four Doe, Five Doe, Six Doe, Seven Doe and Eight Doe, *Defendants*.

Before Albert Lee Stephens, Circuit Judge; Leon R. Yankwich and Campbell E. Beaumont, District Judges.

STEPHENS, *Circuit Judge*:

The plaintiff, who is a packer of raisins in the State of California, instituted this action to restrain the enforcement of a prorate program for raisins prescribed under the authority of the California Agricultural Prorate Act (Chap. 754, Cal. Stats. 1933) as amended, hereinafter called the Act. He has alleged and we hold that he has proved that the issues involve a sum in excess of \$3,000.00, in that the State of California is attempting to enforce the provisions of the Act and is claiming penalties in the amount of \$13,000.00 against the plaintiff.

It is plaintiff's position that the program formulated under the Act is unconstitutional in that it prevents his purchase in open market for shipment in interstate com-

merce and that it constitutes a direct interference with interstate commerce in contravention of the provisions of the Federal Constitution.

The defendant Proration Zone No. 1 filed a cross complaint praying that the Act and program thereunder be declared a valid exercise of the police power of the State of California, that the² plaintiff be enjoined from refusing to comply therewith, and for an accounting and damages for his failure to comply in the past.

The case was tried before United States Circuit Judge Albert Lee Stephens and United States District Judges Leon R. Yankwich and Campbell E. Beaumont, sitting as a "three judge court" under the authority of 28 U. S. C. A. Sec. 380, and was submitted upon the question of the constitutionality of the program set up under the Act.¹

The raisin industry is an important one in California. It is uncontroverted that 95% of the naturally dried raisins consumed in the United States are produced in said Zone No. 1,² and 95% of such raisins produced in said zone are consumed outside the State of California. The stipulation of facts filed by the parties shows the following with reference to the customary manner in which the producers of raisin grapes in California, including Zone No. 1, operate:

"The producer of grapes is generally either the owner or the lessee of the land upon which the grapevines are located. * * * The producer picks the bunches of grapes to be utilized for raisins and spreads them on trays laid between the rows of vines, turns the trays from time to time, and finally dumps the dried contents into sweat boxes or picking boxes. The producer grades the same for quality and to eliminate sub-standard and inferior raisins and sometimes leaves this to be done for him by the packer

¹ We have carefully considered the very recent case of *Railroad Commission of Texas, et al. v. The Pullman Co., et al.*, 61 S. Ct. 643, 85 L. Ed. (March 3, 1941) and have concluded that the principles therein treated do not apply to the issues of the instant case.

² Zone No. 1 was established pursuant to proceedings initiated under the Act, and includes an area composed of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern Counties in the State of California.

before the latter takes delivery. When the producer is ready to deliver his raisins, he hauls the same, or employs independent truckers to haul the same, in sweat boxes or picking boxes to the packing plant, or in some cases the packer calls and takes delivery of the same in the vineyard.

* * * All raisins sold by producers are sold to such packers in the State of California. Sale is completed when delivery is made and practically all sales are cash transaction, the producer receiving full payment for all raisins delivered immediately or within a ten day period.

"When the raisins are delivered by producers to such packers, they are cured but have not been subjected to any cleaning or other treatment. When delivered in such sweat boxes or picking boxes to the packer, the raisins are in clusters attached to the dried stems upon which they matured, except such as have fallen from said stems and have generally still attached a portion of the stem. * * *

"The raisins received from the producers are stored by the packers in containers upon the premises of the latter and are held by him (sic) in such containers for periods varying from a few days up to two years. * * * The packer at any time or at various times during this period removes the raisins from such containers and prepares the same for commercial sale and distribution to the public by cleaning, stemming, cap-stemming, seeding (muscats only), grading, sorting and packaging in various sized containers. * * *

"When such raisins are so prepared for commercial sale and delivery, the packer delivers the same to jobbers, wholesalers, brokers, distributors, and dealers for resale and distribution to the public.

"From the time of the delivery of raisins by the producer to the packer, as set forth herein, the preparation, care, handling, selling and distributing of such raisins is carried on by such packer and all subsequent purchasers and handlers independently of the producer and entirely free from any control or direction of such producer. * * * No producer has any knowledge of the subsequent movement or ultimate use or consumption of the particular raisins delivered by him and has no right, title or interest in

any of such raisins after the sale and delivery by him to the packer. This procedure is carried on by the packer independently of the producer of the raisins who has no knowledge nor means of knowledge as to the ultimate disposition of his particular raisins or as to whether the same ultimately move in intrastate or interstate commerce, except that at times certain producer-packers ship some of their own production directly into interstate commerce."

It will thus be seen that without any prorate provisions in the law, the plaintiff as a packer-dealer would be free to buy and would ordinarily buy the raisins which he boxes and sells in interstate commerce direct from the producer thereof and in amounts limited only by his desire or ability.

Under the Act after a prorate program has been formulated and approved by the commission,³ the agent appointed to administer the program shall issue to the producers certificates as provided in the Act. These certificates are divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which identifies him as a "producer" under the terms of the Act. The Act, Sec. 20, as amended, Statutes 1939, p. 1948, provides that "secondary certificates shall be numbered consecutively, and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel";⁴ and it shall be unlawful for any prorated commodity to be delivered into a primary trade channel without the necessary secondary certificate therefor. It is also unlawful for any handler to receive or have in his possession without proper authority any such commodity. The Act contains a further provision that "in the case of commodities which are normally concentrated for preparation

³ The Act creates an Agricultural Prorate Advisory Commission, and sets up procedure for the formulation of an Agricultural prorate marketing program.

⁴ "Primary channel of trade" is defined by the Act to mean "that transaction in which the producer or his cooperative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially." St. 1935, p. 1527, Sec. 2(j).

for market, the program committee may authorize harvesting of the entire crop for the purpose of delivery to a concentration point and subsequent marketing control."

The program formulated under the Act provides that 20% of all "standard"⁵ raisins shall be delivered into a surplus pool,⁶ the producers to be given an advance of \$27.50 per ton for Muscat and Thompson Seedless raisins, and \$25.00 per ton for Sultanias, the advance to be obtained from the proceeds of a non-recourse loan from the Commodity Credit Corporation, a Federal agency.

Fifty per cent of all standard raisins are to be delivered into a stabilization pool, the producers to receive an advance from the Commodity Credit Corporation funds of \$55.00 per ton for Muscat and Thompson Seedless raisins, and \$50.00 per ton for Sultanias.

The balance of 30% of standard raisins may be disposed of by the producer without restriction as "free tonnage" provided he has obtained a secondary certificate, which certificate is issued to him when he has satisfied the pool requirements and upon payment of a certificate fee of \$2.50 per ton of such free tonnage.

It is provided that no sub-standard or inferior⁷ grade of raisins may be offered as free tonnage or delivered into surplus or stabilization pools, but such raisins are delivered into separate pools for disposal by the program committee at the best prices obtainable and under the fairest conditions obtainable for by-product purposes. The net proceeds

⁵ "Standard raisins" is defined by the Program to mean "raisins of a quality or grade which is equal to, or better than, the quality or grade for standard raisins as determined by the Committee. * * *"

⁶ The program provides for a determination annually of the marketing policy for the marketing season and for the salable, stabilization and surplus percentages to be applied. The stipulation of facts filed herein states the percentages given herein to be the essential features of the 1940 seasonal marketing program for raisins.

⁷ "Sub-standard raisins" is defined by the Program to mean "raisins of a quality or grade below the quality or grade established by the Committee for standard raisins * * *, but which are not inferior raisins." "Inferior raisins" is defined to mean "raisins which are unfit for human consumption, as defined in the Pure Food and Drug Act of the United States of America, 21 U. S. C./A., sec. 1, et seq., as now in force or as hereafter amended."

are distributed ratably to the producers contributing to such pools.

Raisins in the surplus pool may be sold by the committee "as soon as practicable after delivery of the same to the committee . . . provided, however, that none of the standard raisins in such pool shall be sold or otherwise disposed of prior to January 1 of the marketing season in which such pool is established". The Committee determines the prices at which the raisins shall be sold, but it is provided in the program that sales of surplus pool raisins shall be only for assured by-product and other diversion purposes, and that they shall not be sold into normal marketing channels.* There is a provision for transfer of raisins from the surplus pool into the stabilization pool in the event the original estimates were not in accord with later found facts and it later appears that an excessive quantity of raisins has been placed in the surplus pool.

As to the raisins in the stabilization pool, the program provides that they shall be sold by the committee "as soon as practicable after delivery of same to the committee, . . . in such manner as to maintain stability in the markets and to dispose of such raisins". No sales of raisins from the stabilization pool shall be made at less than the prevailing market price for raisins of the same variety and grade on the date of sale. Stabilization pool raisins shall be sold only into normal marketing channels. There is a provision for transfer of raisins from the stabilization pool into the surplus pool in the event of an error in the original estimates of carry-over, etc. In the disposal of stabilization pool raisins "effort shall be made by the committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor." (quotation from Program.)

The producers of the raisins have a limited equitable interest in the raisins in the surplus and stabilization pools.

* "Normal marketing channels" is defined to mean "those merchandising channels through which handlers customarily dispose of raisins for human consumption as raisins."

calculated upon a pro rata basis in accordance with the tonnage of each such producer, with adequate and proper differentials for variety and grade, and less deductions for advances made by the committee to such producer.

It will be seen that with the Act and program thereunder in operation, the plaintiff as packer who contracts for delivery of a very large percentage of the raisins he handles directly into interstate commerce, cannot freely purchase raisins directly from the producer, for, except as to the "free tonnage" raisins, he must make his purchase from the Zone representatives under restrictions herein mentioned; and as to the 30% free tonnage he must make his purchases only when the raisins are accompanied by the secondary certificates showing full compliance with the program.

There is in evidence a copy of the "Stabilization Pool Sales Policy" set up by the Zone Agent, which recites that the Program Committee reserves the right to determine the eligibility of packers to purchase stabilization pool raisins, and that in order to be eligible to purchase raisins from the committee a packer must be completely current in respect to payment of secondary proration certificate fees. Another item taken into consideration in the determination of eligibility to purchase raisins is whether or not there has been complete proration of all raisins in the packer's possession or on his premises.

It comes to this, that the plaintiff cannot, without violating the provisions of the program, purchase any raisins for his interstate or intrastate business from a grower who does not have the certificate showing his full compliance with the program, and the evidence is clear that plaintiff took orders for out-of-state delivery which he could not fill by purchase of so-called "free tonnage" raisins and could not fill at all because of the program pool without complying with the program. Nor can he under the regulations prescribed by the Program Committee purchase any raisins deposited in the stabilization pool if he has on his premises or in his possession any raisins that are not accompanied by the certificate showing proration by the grower thereof.

Plaintiff in support of his position that the program formulated under the Act is unconstitutional as a direct interference with his shipping raisins in interstate commerce, cites the case of *Mutual Orange Distributors v. Agricultural Prorate Commission of the State of California*, D. C., 35 Fed. Supp. 108, recently decided by a three judge court sitting in this District but with different District Judges sitting with the Circuit Judge, and defendants seek to distinguish the case on the facts. Notwithstanding its title this cited case has nothing to do with oranges, but is concerned solely with the prorate program for the marketing of lemons. This case will be referred to as the "lemon prorate case". We are of the opinion that notwithstanding factual differences in the two cases, each of them brings very similar principles to bear upon the issues.

Defendants' point of alleged distinction seems to be that in the lemon prorate case the prohibition was on the producers of lemons selling their product in interstate commerce without the secondary certificates provided for in the Act. The lemon proration program prorated among all growers in the State the lemons which could be marketed in primary trade channels. The custom of lemon growers was to sell direct to the trade out of the state. In the instant case the custom of the trade is for the producer of raisin grapes to sell the cured raisins to packers within the state, and the packers in turn sell to jobbers and wholesalers for distribution to the consuming public. The prohibition is on the grower from selling, and the packer from buying raisins on which a secondary certificate has not been issued. The argument is that this is an intrastate transaction, and therefore the program attaches before the raisins have entered interstate commerce, and that it cannot be said that the program constitutes a direct interference with interstate commerce.

Championing the constitutionality of the program the defendants invoke the principle that a State may legally use its police power in the interest of the welfare of its people, even to the extent of affecting interstate commerce. This principle, with its limitations, was discussed by the Supreme Court in *Simpson v. Shepard*, 230 U. S. 352, 399, in the following language:

"The power of Congress to regulate commerce among the several states is supreme and plenary. * * * The conviction of its necessity sprang from the disastrous experiences under the Confederation, when the states vied in discriminatory measures against each other. In order to end these evils, the grant in the Constitution conferred upon Congress an authority at all times adequate to secure the freedom of interstate commercial intercourse from state control, and to provide effective regulation of that intercourse as the national interest may demand. * * *

"The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. * * *

"Thus the states * * * have no power to prohibit interstate trade in legitimate articles of commerce (citing cases). * * *

In *Lemke v. Farmers Grain Co. of Embden*, 258 U. S. 50, 42 S. Ct. 244, 66 L. ed. 458, the Supreme Court had under consideration the constitutionality of a state statute which required purchasers of grain to obtain a license and pay a license fee, and to act under a defined system of grading, inspection and weighing. The defendants in that case, as in the instant case, relied upon the principle that a state may make local laws under its police power which may stand until Congress takes possession of the field under its superior authority to regulate commerce among the States. The Supreme Court rejected the defendants' argument, stating (258 U. S. page 59, 42 S. Ct. page 247, 66 L. ed. 458),

"This principle has no application where the State passes beyond the exercise of its legitimate authority and undertakes to regulate interstate commerce by imposing burdens upon it."

The Court reaffirmed its decision in *Simpson v. Shepard*, supra, and applying the principles laid down in that case,

held that the statute under consideration was unconstitutional in that it denied the privilege of engaging in interstate commerce *except to dealers by state authority*. And in *United Leather Workers International Union v. Herkert Meisel Trunk Co.*, 265 U. S. 457, (p. 467) 44 S. Ct. 623, 68 L. ed. 1104, 33 A. L. R. 566, the Supreme Court said the statute under consideration in the Lemke case was a direct limitation on interstate commerce.

In *Grandin Farmers' Co-op Elevator Co. v. Langer*, Dist. Co. No. Dak. S. W. Div., 1934, 5 Fed. Supp. 425, affirmed without opinion, 292 U. S. 605, 54 S. Ct. 772, 78 L. ed. 1467, the state statute under consideration declared an embargo on its wheat when prices became so low as to become confiscatory. The Court said (5 F. Supp. page 427),

"The state has no power to interfere directly with interstate commerce, regardless of economic conditions. The regulation of such commerce is a matter of national concern. . . . If one state or all the states could place embargoes upon the export of the products of their mines, forests, fields, and oil wells, an inconceivable condition of national insecurity would follow. . . ."

"A state statute which, by its necessary operation, directly interferes with or burdens interstate commerce is a prohibitive regulation and invalid, regardless of the purpose for which it was enacted (citing cases)."

We think the case of *Champlin Refining Co. v. Corporation Commission of Okla.*, 286 U. S. 210, 52 S. Ct. 559, 76 L. ed. 1062, 86 A. L. R. 403, although sometimes asserted as such, is not authority for the contention that practically unlimited proration of a state's product is within the power of the state. In that case the Supreme Court had under consideration a state statute which curtailed *production of oil to prevent waste*. It was there held that production of oil is a mining operation and not a part of interstate commerce even though the product obtained is intended to be and in fact is immediately shipped in such commerce.

In considering the *Champlin Refining Co.* case, *supra*, the case of *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 31 S. Ct. 564, 55 L. ed. 716, 35 L. R. A., N. S., 1193, should

also be taken into consideration. In the West case the state act prohibited foreign corporations from laying pipe lines across highways and transporting natural gas therein to points outside the state. It further provided that domestic corporations must transmit gas only between points in the state, and shall not transport or deliver gas to corporations or persons engaged in transporting or furnishing gas to points outside the state. In holding this statute unconstitutional, the Court distinguished between the police power of the State to regulate the *taking* of a natural product, such as natural gas, from its natural placement, and prohibiting that product from transportation in interstate commerce after removal from its natural placement, saying that the former is within, and the latter beyond, the power of the State. It is stated that gas, *when reduced to possession*, is a commodity and belongs to the owner of the land. It is his individual property subject to sale by him, and may be a subject of intrastate commerce and interstate commerce. A state statute which attempts to prohibit its being a subject of interstate commerce is unconstitutional.

In the light of the broad grant of power given Congress over interstate commerce and the principles laid down by the Supreme Court as herein outlined, the necessary effect upon interstate commerce of the raisin prorate program must be scrutinized, and this with the principle in mind that one challenging the validity of a state enactment is not necessarily bound by the legislative declarations of purpose. It is open to him to show that the practical operation of the statute or of any program devised under the authority of such statute directly burdens or effectively prevents the free flow of interstate commerce. *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 49 S. Ct. 1, 73 L. ed. 147.

It may here be stated that the inhibition of the program is not based upon crop limitations or upon the health of the consumer or protection of the industry through exclusion from the market of unfit fruit. Such cases as *Sligh v. Kirkwood*, 237 U. S. 52, 32 S. Ct. 501, 59 L. ed. 835, are not in point. And it is not based upon false labeling or deceptive packaging. Neither is it a statute regulating proper conditioning of the commodity prior to its being offered to the

consumer. Nor is it a limitation upon submitting ripe grapes to a proper process whereby the grape becomes a marketable raisin. The stipulation itself speaks of the sun dried grape as a "raisin" before it is removed from the vineyard and before it is stemmed, cleaned or packaged.

No facts, claims or argument in this case have been related to the part of the program designated "Green Diversion". There have been no steps taken to change the production of raisins in quantity either above or below the growers' own judgment or desire. We are constrained to hold and do hold that the production of raisins is complete when the grapes dry and cure into raisins. This natural process of drying and curing takes place on the premises where the grapes are grown, and is accomplished without the intervention of anyone either in cooperation or otherwise with the producer (farmer, grower). When the grapes are so dried and cured they are substantially ready for market as raisins. The process of stemming, cleaning, etc. which is not uniform in packing plants, tends to make the raisins more desirable commercially and thus create a greater demand for them in the market, but is not essential to production. It is our opinion that the prorated program as presented in this case does not attach to or impinge upon "production".

Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842, 81 L. ed. 1210 is cited as authority for the constitutionality of the Act and program thereunder. There a State statute fixing reasonable maximum charges for the services of warehousemen handling tobacco was held constitutional.

The following quotations from the Yeomans case indicate how widely different the state regulation there concerned is from the one before us:

"... we find no ground for concluding that the state requirements lay any *actual* burden upon interstate or foreign commerce. The Georgia Act does not attempt to fix the prices at the auction sales or to regulate the activities of the purchasers. The fixing of reasonable maximum charges for the services of the warehousemen in aid of the tobacco growers does not militate against any interest of

those who buy." 301 U. S. page 455, 57 S. Ct. page 849, 81 L. ed. 1210. (*Italics the Court's.*)

"(quoting from *Cargill Co. v. Minnesota*, 180 U. S. 452, 470, 21 S. Ct. 423, 45 L. ed. 619) 'The statute puts no obstacle in the way of the purchase by the defendant company of grain in the State or the shipment out of the State of such grain as it is purchased.'"

301 U. S. page 457, 57 S. Ct. page 850, 81 L. ed. 1210.

"Here, the Georgia Act lays no constraint upon purchases in interstate commerce, does not attempt to fix the prices or conditions of purchases, or the profit of the purchasers. It simply seeks to protect the tobacco growers from unreasonable charges of the warehousemen for their services to the growers."

301 U. S. page 459, 57 S. Ct. page 850, 81 L. ed. 1210.

While it is true that the program purports merely to prevent and regulate the sale of raisins to the packer under the universal custom of his cleaning, stemming and packaging them within the State, the raisins on the producing premises and those stored by the program committee are at all times kept from market except through the operation of the program. It is impossible to avoid the conclusion that the purpose and necessary effect of the program is to place a controlled embargo on the State's raisin production, in order to effect and stabilize prices. It seems clear to us that the program is frankly and simply a means of controlling the supply of raisins into interstate trade channels to meet the market demands. As to this purpose it is not in our province to comment. We think the State has attempted to accomplish this result by a process which impinges upon a grant of power to the Federal government. The following quotation from the Program is illustrative:

"Secondary Certificates shall be issued to control the time and volume of movement of salable raisins into the primary channels of trade." (Article XI, Sec. 1 (b).)

The Program gives the Committee the power to sell the pooled raisins "in such manner as to maintain stability in the markets", and provides that no sales "shall be made

at less than the prevailing market price for raisins of the same variety and grade on the date of sale", and "effort shall be made by the Committee to effectuate sales in such fashion that the quantity of such stabilization pool raisins sold from time to time shall be coordinated as closely as possible with market demands therefor".

The "Stabilization Pool Sales Policy" set up by the Committee provides for opening prices ranging from \$55.00 per ton for Sultanas to \$60.00 per ton for Thompson Seedless Raisins. It is stated "Notwithstanding anything herein to the contrary, the above opening prices will not be reduced by the sales policy committee of the Surplus Marketing Administration within sixty (60) days from the effective date hereof (Jan. 1, 1941)."

In a printed communication sent out by the Proration Program Committee to the raisin producers within the zone, it is stated that the program " . . . was based upon the idea . . . that a large part of the 1940 crop should be placed in pools under Committee supervision to prevent a flooding of the few available markets, with the inevitable price decline which goes with flooded markets".

By every authority of our acquaintance the enforcement of the implementing program under the Act constitutes a direct and illegal interference with interstate commerce.

It is no answer in principle to say that under the terms of the program 30% (free tonnage) of produced raisins are available for the open market. This percentage is fixed by the program as best calculated to serve its purposes, it might be 15% of the crop or none at all. The vice of the situation is that the program requires the submission of any properly marketable part of the crop to its terms, all of which are directed to the control of the commodity into commerce. It is the judgment of the program administrators that such purpose will be advanced with the freeing of 30% of the crop at the beginning of the 1940-1941 season's market. After the release of the 30% free tonnage the amount of raisins which may be released for absorption by the market equated from the pool is also wholly within the judgment of the prorate authorities.

We are reminded of Mr. Justice McKenna's illustration in the case of *Heisler v. Thomas Colliery Company*, 260

U. S. 245, 43 S. Ct. 83, 84, 67 L. ed. 237, wherein he sustains the State's right to a tax on coal "washed or screened, or otherwise prepared for market" and remarks that if the subject matter is under Congressional jurisdiction because the coal will enter interstate commerce "The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West, etcetera." But, on the other hand, if the State of California has the power to execute a control plan of its entire fruit crop and permit it to enter the market for consumption only as and when its administrators adjudge proper, then every state can so control all industries and crops within its boundaries by the same token. This presents a condition certainly no less repugnant to our dual system of State and Federal government than that illustrated by Mr. Justice McKenna, a condition in the situation confronting us which the constitutional fathers sought to guard against by writing the commerce clause into the Constitution itself. (See hereinbefore quoted portion of the opinion in the case of *Grandin Farmers' Co-op Elevator Co. v. Langer*, supra.) In our opinion the State has ventured upon a sphere of governmental activity which impinges upon a constitutional provision which the framers of the Constitution recognized as necessary to the national status of the several states in their Union.

It is our duty to declare the law as we see it. We cannot however fail to appreciate the economic effect of our decision in this case. It may not be out of place therefore to mention here the highly fortunate circumstance that there is federal law and administrative machinery available by which a proper and legal proration of the raisin crops may be accomplished if such is generally held to be desirable.

The petition for a decree permanently enjoining the defendants from enforcement of the raisin prorate program hereinbefore referred to is granted. The relief sought by defendants in their cross complaint is denied. Plaintiffs may draw findings of fact and conclusions of law in conformity with the expressions of this opinion.

In view of the fact that the case was submitted solely on the question of the constitutionality of the program, we do not consider the defenses of estoppel and the statute of limitations raised by the defendants in their pleadings.

Brown v. Parker, 39 Fed. Supp. 895, at 902-906.

“YANKWICH, *District Judge* (dissenting):

“The control of the Congress over interstate commerce, United States Constitution, Art. I, Sec. 8, Cl. 3, being absolute, any direct interference with it by any State must give way. But this Congressional primacy does not stand in the way of regulations by the States, through the exercise of their taxing or police powers, which, although local in their nature, affect interstate commerce. See *The Minnesota Rate Cases*, 1913, 230 U. S. 352, 399, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L. R. A., N. S., 1151, Ann. Cas. 1916A, 18; *Milk Control Board v. Eisenberg Farm Products*, 1939, 306 U. S. 346, 351, 59 S. Ct. 528, 83 L. Ed. 752; *United States v. Rock Royal Co-Op.*, 1939, 307 U. S. 533, 569, 59 S. Ct. 993, 83 L. Ed. 1446; *Mulford v. Smith*, 1939, 307 U. S. 38, 48, 59 S. Ct. 648, 83 L. Ed. 1092.

“In a recent case (*California v. Thompson*, 1941, 61 S. Ct. 930, 932, 85 L. Ed. —), Mr. Justice Stone has stated the extent of compatibility of state regulation with national supremacy in the field of interstate commerce in these words:

“As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce. Ever since *Wilson v. Blackbird Creek Marsh Co.*, 2 Pet. 245, 7 L. Ed. 412, and *Cooley v. Board of Port Wardens*, 12 How. 299, 13 L. Ed. 996, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of their local character and their number and diversity may never be adequately dealt with by Congress. Because of their local character, also, there

is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. Notwithstanding the Commerce Clause, such regulation in the absence of Congressional action has, for the most part, been left to the states by the decisions of this Court, subject only to other decisions of this Court, subject only to other applicable constitutional restraints. See cases collected in *Di Santo v. Pennsylvania*, supra, 273 U. S. (34) 40, 47 S. Ct. 267, 71 L. Ed. 524'.

"When we consider Congressional regulation of interstate commerce, we must, as students of late juristic trends, concede that recent decisions, such as those sustaining the National Labor Relations Act, 29 U. S. C. A. Sec. 151 et seq. (*National Labor Relations Board v. Jones-Laughlin Corp.*, 1937, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352) and the Fair Labor Standards Act, 29 U. S. C. A. Sec. 201 et seq. (*United States v. Darby*, 1941, 312 U. S. 100, 61 S. Ct. 451, 85 L. Ed. —, 132 A. L. R. 1430), extend the power of the Congress to dominate purely local conditions, through the exercise of its absolute control over interstate commerce."

But this *does not mean* that because a product is destined for interstate commerce, or a business aims at interstate commerce, it is, *by this very fact*, without the ambit of state regulation. Carriers or persons engaged in transportation in interstate commerce may be subjected to many state regulations. See their enumeration by Mr. Justice Stone in *California v. Thompson*, 1941, 61 S. Ct. 930, 85 L. Ed. —. So, also, may the taxing power of a state be used to tax products originating in, or intended for, interstate commerce, either before leaving the state or after reaching it. See *Henneford v. Silas Mason Co.*, 1937, 300 U. S. 577, 57.

* These decisions overrule all the cases, such as *Hammer v. Dagenhart*, 1918, 247 U. S. 251, 38 S. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724, and *Carter v. Carter Coal Co.*, 1936, 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, which, if followed, would have made it impossible for the Congress to influence, by indirect regulation, industrial relations within state confines.

S. Ct. 524, 81 L. Ed. 814; *Ford Motor Company v. Beauchamp*, 1939, 308 U. S. 331, 60 S. Ct. 273, 84 L. Ed. 304; *Felt & Tarrant Manufacturing Co. v. Gallagher*, 1939, 306 U. S. 62, 59 S. Ct. 376, 83 L. Ed. 488; *Pacific Tel. & Tel. Co. v. Gallagher*, 1939, 306 U. S. 182, 59 S. Ct. 396, 83 L. Ed. 595; *McGoldrick v. Berwind-White Co.*, 1940, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876.

While the rigid distinction between production and commerce no longer holds in so far as the exercise of congressional restraint and regulation is concerned, (See *United States v. Darby*, 1941; 312 U. S. 100, 61 S. Ct. 451, 85 L. Ed. —, 132 A. L. R. 1430), it is still maintained when we come to assay the exercise of state powers. In a leading case on the subject, (*Heisler v. Thomas Colliery Co.*, 1922, 260 U. S. 245, 43 S. Ct. 83, 86, 67 L. Ed. 237), Mr. Justice McKenna stated the principle in these words:

“We may, therefore, disregard the adventitious considerations referred to and their confusion, and by doing so we can estimate the contention made. It is that the products of a state that have, or are destined to have, a market in other states *are subjects of interstate commerce*, though they have not moved from the place of their production or preparation.

“The reach and consequences of the contention *repels its acceptance*. If the possibility, or indeed certainty, of exportation of a product or article from a state determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. *It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet “on the hoof”, wool yet unshorn, and coal yet unmined because they are in varying percentages des-*

ined for and surely to be exported to states other than those of their production. *Heisler v. Thomas Colliery Co.*, 1922, 260 U. S. 245, 259, 43 S. Ct. 83, 67 L. Ed. 237. (Italics added.)

And see *Veazie v. Moor*, 1852, 14 How. 568, 573, 574, 14 L. Ed. 545; *Kidd v. Pearson*, 1888, 128 U. S. 1, 20, 21, 9 S. Ct. 6, 32 L. Ed. 346; *Oliver Iron Co. v. Lord*, 1923, 262 U. S. 172, 178, 179, 43 S. Ct. 526, 67 L. Ed. 929.

The act there before the Court subjected every ton of anthracite coal mined, 'washed, screened, or otherwise prepared for market' in the state to a one and one-half percent tax of its value when prepared for market, to be assessed after it is prepared as indicated and 'is ready for shipment or market.' Penn. Laws, 1921, page 479, 72 P. S. Pa. Sec. 2501.

Here was a product, anthracite coal, on which many states depended at the time, for fuel, found only in a small number of counties in the State of Pennsylvania, and, from its very nature, destined for interstate commerce the moment it left the mine. Here was a tax, the effect of which made the cost of production greater and sale in interstate commerce more burdensome. Yet the Court could see in it no assault upon federal supremacy in the realm of interstate commerce.¹⁰

I can see no escape from this conclusion.

Unless we are ready to say that the recent decisions extending congressional power to regulate local conditions, through the exercise of control over interstate commerce, have destroyed the power of the States to deal with products of agriculture or manufacture which are destined for

¹⁰ This case was decided after *Lemke v. Farmers' Grain Co.*, 1922, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458, upon which my associates' finding of unconstitutionality of the raisin program is chiefly bottomed. And the opinion was written by the same justice, Mr. Justice McKenna. The principles it declares have never been questioned. Some of the later cases in which it is cited or followed are: *Oliver Iron Co. v. Lord*, 1923, 262 U. S. 172, 179, 43 S. Ct. 526, 67 L. Ed. 929; *United Leather Workers' International Union v. Herkert & Meisel Trunk Co.*, 1924, 265 U. S. 457, 465, 44 S. Ct. 623, 68 L. Ed. 1104, 33 A. L. R. 566; *Hope Gas Co. v. Hall*, 1927, 274 U. S. 284, 288, 47 S. Ct. 639, 71 L. Ed. 1049; *McGoldrick v. Berwind-White Co.*, 1940, 309 U. S. 33, 47, 60 S. Ct. 388, 84 L. Ed. 565, 125 A. L. R. 876.

interstate commerce before they actually enter the flow of that commerce. Even the most extremists of the newer federalists would not go so far. See Walton H. Hamilton and Douglass Adair, 1937, *The Power to Govern*; Edward Corwin, 1926, *The Commerce Power versus State Rights*; Edward Corwin, 1941, *Constitutional Revolution Limited*.

The thoughts just expressed find support in *Champlin Refining Co. v. Commission*, 1932, 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A. L. R. 403, which involved the Oklahoma oil prorate law. It is true that oil, being a natural resource, allows, constitutionally, broader regulation both federal and state, than other products of industry or agriculture. And the Court said so. However, the Court, while giving its sanction to the State's regulation upon that score, also dealt specifically with its relation to the interstate commerce clause. And, in finding no conflict with it, the Court did not place its decision upon *the character of oil as a natural resource*. It determined the case upon the ground that the law was a regulation of production before oil entered the flow of interstate commerce. And it found it unobjectionable, although the oil was intended for interstate shipment. The Court said:

" 'Plaintiff contends that the act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. . . . It is clear that the regulations prescribed and authorized by the act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is intended to be and in fact is immediately shipped in such commerce. ' *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178, 43 S. Ct. 526, 67 L. Ed. 929; *Hope Gas Co. v. Hall*, 274 U. S. 284, 288, 47 S. Ct. 639, 71 L. Ed. 1049; *Foster Packing Co. v. Haydel*, 278 U. S. 1, 10, 49 S. Ct. 1, 73 L. Ed. 147; *Utah Power & Light Co. v. Pfof*, *supra* (286 U. S. 165, 52 S. Ct. 548, 76 L. Ed. 1038). No violation of the commerce clause is shown.' *Champlin Refining Co. v. Commission*, 1932, 286

U. S. 210, 235, 52 S. Ct. 559, 565, 76 L. Ed. 1062, 86 A. L. R. 403. (Italics added.)¹¹

In effect, this means that the nature of a product does not determine its availability as an object of state legislative control outside of the inhibition of the commerce clause. Rather must the question be determined in the light of the facts in each case. A state embargo upon a product is forbidden. See *Lemke v. Farmers' Grain Co.*, 1922, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458; *Shafer v. Farmers' Grain Co.*, 1925, 268 U. S. 189, 45 S. Ct. 481, 69 L. Ed. 909; *Baldwin v. Seelig*, 1935, 294 U. S. 511, 55 S. Ct. 497, 79 L. Ed. 1032, 101 A. L. R. 55. But state enactments or programs which affect, *indirectly*, either through regulation or taxation, the quantity of a product available for use in interstate commerce before it enters it, do not, as I read the cases, impinge upon the commerce clause.¹² To hold otherwise is to bring about the conditions which Mr. Justice McKenna

¹¹ The California Agricultural Prorate Act was enacted on June 5, 1923, St. 1923, p. 1969, after the decision in *Champlin Refining Co. v. Commission*, 1932, 286 U. S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A. L. R. 403, which was filed on May 16, 1932. It was modeled after the Oklahoma Oil prorate statute which the Court had before it in that case. Its definition of "waste" is almost identical with that in the Oklahoma Statute. It reads:

"The terms 'agricultural waste'—in addition to their ordinary meaning—shall include economic waste, and waste incident to the harvesting and/or preparation for any delivery to market of agricultural commodities in excess of *reasonable market demands*." (Calif. Stats. 1933, Ch. 754, Sec. 2, as amended by St. 1935, p. 1527(b).) (Italics added.)

The definition of waste in the Oklahoma Statute, 52 Okl. St. Ann. Sec. 273 (as found in a footnote to page 223 of 286 U. S., 52 S. Ct. at page 560 of the opinion) reads:

"That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or *reasonable market demands*." (Italics added.)

¹² A very recent illustration of judicial sanction for a state regulation of the handling of what might be called an inherently interstate commodity, tobacco, is found in *Townsend v. Yeomans*, 1937, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1210.

envisaged in *Heisler v. Thomas Colliery Co.*, supra. It is to remove every product, the sale of which is ultimately an interstate act, from local control. For if every regulation which may affect the quantity of the product available for interstate shipment be violative of the commerce clause, state statutes regulating the quantity and conditions of production of an article of commerce, or the wages or hours and conditions of labor of employees producing it, must go by the board. And the reason is obvious. For such legislation, from an economic standpoint, ultimately affects production. It increases the burden upon production and discourages those who consider the burden oppressive from engaging in such enterprise.

And this is true, whether we consider restrictions on working hours of men (California Labor Code, St. Cal. 1937, p. 205, et seq., Secs. 510-856) or of women and children (California Labor Code, Secs. 1171-1398, p. 213 et seq.) regulations of the manner of payment of wages (California Labor Code, Secs. 200-452, p. 201 et seq.), minimum sanitation requirements (California Labor Code, Secs. 2330-2425, p. 253 et seq.), or laws establishing employers' liability (California Labor Code, Secs. 3201-6002, p. 265 et seq.), or decreeing safety devices (California Labor Code, Secs. 6300-7601, p. 306 et seq.)

They all increase cost and, therefore, diminish the quantity of production. It is also axiomatic that free, unregulated, anarchic enterprises attract the intrepid and adventurous in the economic field more readily than strictly controlled ventures. Control thus diminishes production in existing establishments and discourages increase in the number of enterprises.

It follows that if the fact that a product is destined for interstate commerce, automatically places it without the scope of state control, then control of the type enumerated is immediately nullified.

To bring these thoughts to bear upon the problems before us.

Raisins as produced by the grower, through the drying and sweating process, from grapes grown on his land, are not an article of commerce. They are not ready for ship-

ment or market. Nor are they fit for human consumption. Before they may be served as human food, the packers must process them through a complicated process. This alone makes them palatable and fit for use. The State of California has undertaken, through this legislation, and the program intended to carry it into effect, to impose certain regulations, to pool a portion of the crop and to restrict free sales as between the growers and the packers. This program, which derives its sanction from the assent of the growers, deals entirely with raisins before they enter the flow of interstate commerce. I grant that its effect is to restrict freedom of action in dealings between growers and packers within the state. If this result in making raisins unavailable to recusants like the plaintiff, except upon compliance with certain conditions, this is no more a direct burden on interstate commerce than was the tax on anthracite coal (*Heisler v. Thomas Colliery Co.*, supra), without the payment of which no anthracite coal was available for shipment in interstate commerce, or the curtailment of oil production through proration, (*Champlin Refining Co. v. Commission*, supra), which reduced directly the quantity of oil available for shipment in interstate commerce.

Hence my dissent from the conclusion reached by my colleagues."